

Legislation And Development of Education

(With Specific Reference to Elementary Stage)

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National Council of Educational Research & Training
Sri Aurobindo Marg
New Delhi
2001**

FOREWORD

Education as an instrument for individual, societal and economic transformation is well recognized. It is the very foundation of good citizenship and is a principal instrument in awakening the child to cultural values. In this context, the role of educational legislation in regulating and upgrading the education system of country is undeniably significant. The content of educational legislation of a country reflects the awareness and concern of the government and society for the education of children.

As any area of endeavour, educational legislation in general and compulsory education in particular evolved over the decades to educate the masses for the country's upliftment and national development. Though the theoretical acceptance of the principle of compulsory education germinated during pre-independent period with the introduction of Gokhale's Bill and Patel Act, it acquired its force by the country's independence and promulgation of the constitution. Acknowledging the constitution as the legal basis and structure for the educational policies, majority of the states enacted suitable compulsory legislation. These legislations have gone through substantial metamorphosis to achieve the constitutional mandate of free and compulsory education during last fifty years of Indian republic.

The present study provides a laconic account of legislation on compulsory education vis-à-vis development of elementary education in our country. Compulsory education in India has been presented dexterously from its origin to recent debate on Education as a Fundamental Right. It may also be marked that it has larger implications on country's initiative towards Sarve Siksha Abhiyan.

The completion of fifty years of Indian Republic is being celebrated by the Government of India through a number of initiatives. This project has been undertaken by the NCERT as one of the various activities to celebrate the occasion.

I acknowledge and congratulate my colleagues Dr. Saroj Pandey and Dr. Pranati Panda for accomplishing this significant and worthwhile research project. I am sure this report would be useful for scholars, educational administrators, teachers, legislators and those interested in the legal basis of education.

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PREFACE

Education matters because it is a fundamental right, and because it is intrinsically important in its own right. It opens new horizons and raises quality of life of the individual as well as the nation. Therefore, majority of countries around the world have enacted laws making schooling compulsory for at least up to elementary level. Educational Legislation in India, however, has a chequered history and predominantly a post-independence phenomenon though the earliest concerns of the state in the development of school education finds expression in the legislation relating to compulsory education during pre independence period. The laws providing for compulsory primary education enacted by different provinces, between 1916 and 1921 are landmarks in the legislative history of Indian school education. The seeds of state policy in favour of compulsory education find their earliest expression in these laws, some of which continued to be in practice even after independence.

The present study comprehensively examines the genesis of legislation on education in India right from the charter Act of 1813 to the 83rd Constitutional Amendment Bill of 1997, vis-à-vis development of elementary education in the country.

The study has been accomplished as a result of the academic guidance and expert suggestions provided by eminent educationists Dr. R. P. Singhal, Prof. O. S. Dewal, Prof. R. P. Dhakolia, Prof. G. L. Arora, Prof. P. R. Chauhan, Prof. Subba Rao and Dr. J. C. Goyal. I wish to place on record my deepest sense of gratitude for their continued flow of encouragement and inspiration throughout the study.

I express my thanks to my colleague Dr. Pranti Panda for her contribution in the study.

I wish to express my sincere gratitude to Prof. G. K. Lehari, Head, DTEE. But for his involvement the study would not have been possible.

The academic assistance provided by Miss Sneha Singh, the JPF, in collection, collation and analysis of legislation of various states is duly acknowledged.

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CHAPTER – I

INTRODUCTION

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1. Backdrop

Education has been regarded as the most crucial means to improve the quality of human life. All progressive societies around the world, therefore, always attempt to link education to the demands of contemporary society to eradicate ignorance and prejudice and remove poverty and economic disparities. National goals are translated into reality through the process of education. Recognizing the importance of education, The Universal Declaration of Human Rights (1948) of the United Nations in its Article 26 proclaims, "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages." Education has been accorded an important place in the Constitution of India under the Directive Principles of State Policy. According to Article 45, the state shall endeavour to provide free and compulsory education to all children upto the age of 14 years. Though the Directive Principles cannot be enforced through courts, yet, they provide direction for the legislature to proceed on certain lines and achieve the goal of welfare state.

Legislation has been considered as one of the crucial means through which governments often seek to bring about change in existing systems and practices or by implication in behaviours, values and attitude of people. Majority of countries like Japan, China, Korea, erstwhile U S S R and U S A etc. have successfully achieved the goal of compulsory education through strict enforcement of laws, which ensure that each and every child of the relevant age group attends school. The Education Act 1944 of England, for instance, under para II, 35 clearly defines the 'compulsory school age' of children as any age between 'five years and fifteen years' and stresses that 'it shall be the duty of the parents of every child of compulsory school age to cause him to receive effective full time education suitable to his age, ability and aptitude, either by regular attendance at school or otherwise (para II, 36)'. Indian Education Acts are greatly influenced by the Education Act

(1944) of England In U S A education is primarily a function of state government, consequently the legal control of education resides mainly with the states and the Federal Constitution does not make any reference of education The state legislatures have plenary or “full powers” to control education within their state In India, as indicated earlier, the constitution provides legal foundation for education Education being a concurrent subject, both, state and centre have the right to legislate in the matters concerning education, though in practice, states have freedom to take decisions pertaining to various educational issues within the broader Constitutional framework However, a large number of statutory institutions have been established through Acts of parliament from time to time

A quick glance at various Educational Acts in India reveals that these may be classified in different categories as

1.1 Compulsory Primary Education Acts

Majority of states in India have passed compulsory Primary Education Acts to operationalise the constitutional provision for free and compulsory education for instance, the Madhya Pradesh Primary Education Act 1961, Assam Basic Education Act 1962, Uttar Pradesh Basic Education Act 1972 Bombay Primary Education Act 1947, Gujarat Compulsory Primary Education Act 1961 etc Karnataka Education Act 1983 explicitly states that the objectives of primary education is universalisation of education at the primary level by comprehensive access, through both formal and non-formal means These Compulsory Education Acts have laid down comprehensive norms for admission policy, attendance rules, responsibility of parent or guardian, medium of instruction, establishment, recognition, management and aids to schools etc

1.II Acts for Establishment of Statutory Institutions

A number of statutory institutions have been established in the country through Acts of Parliament or state legislatures which have helped not only in the quantitative expansion of education at various stages but improving its quality also. For instance a number of central universities like, the Aligarh Muslim University was established by the Government of India through the Aligarh Muslim University Act 1920, U.G.C was established through the University Grants Commission Act 1956; AICTE Act was passed by the Parliament in 1987 to establish statutory All India Council for Technical Education with the objective of proper planning and coordinated development of technical education system throughout the country. The NCTE has been established through the NCTE Act no. 73 by the Parliament in 1993 as an autonomous statutory organization with a view “ to achieving planned and coordinated development of teacher education system through out the country, the regulation and proper maintenance of norms and standards in the teacher education system and for matters connected there with”. Besides, various Boards have been established, which have made significant contribution towards the growth of education at all levels

1. III Sectoral Acts

A number of states in the country have separate Acts for different levels of school education. Uttar Pradesh was the first state in the country to have separate Act for Secondary level. The U P Intermediate Education Act was passed in 1921, separating the Intermediate Education from the University and adding it to the school education. One of the main arguments, which was put forth at that time to sustain the idea of separation, was that, school leaving as it obtained up to the year 1919-20, was not a sufficiently advanced stage in the education of a young person to make him fit for starting on a career with much confidence.

Few educationists at that time were of the opinion that the school education should be divided into three clear cut stages:

- i) The Primary Stage
- ii) The Secondary Stage, and
- iii) The Higher Secondary Stage

The objective of U.P. Act as stated in its preamble is “whereas it is expedient to establish a Board to take the place of the Allahabad University in regulating and supervising the system of High School and Intermediate Education in Uttar Pradesh and to prescribe courses thereof”.

Under this Act, the Board was not given the status of a corporate body having a perpetual succession, a common seal, a right to sue or be sued in its own name. But the status of corporate body was conferred on the Allahabad University by the Allahabad University Act 1921. The scheme of U P. Intermediate Education Act indicated, that, the Legislature only provided for a statutory body.

The U.P. Basic Education Act was passed in 1972 and recommended the constitution of Uttar Pradesh Board of Basic Education. It defines the functions of the Board which include, among others, the exercise of supervision and control over basic and normal schools. With the enforcement of the U.P. Basic Shiksha Act 1972, all educational institutions functioning under Municipal Board and Zila Parishad, imparting primary education, were transferred to the Basic Shiksha Parishad constituted under the Act. Many other states have separate acts for Secondary/Intermediate education for instance, Rajasthan Board of Secondary Education Act 1957, the West Bengal Board of Secondary Education Act, and the Maharashtra Secondary Education Board Act 1965 etc.

1. IV Cognate Laws

In addition to the specific Acts passed by various states in the area of education, there are a number of other acts which, though, have been passed in other context, but have a bearing on education. These include Disability Act, Child Labour Act, Minority Act, Panchayati Raj Act, Prevention of Child Marriage Act etc. Besides a large number of High Court and Supreme Court rulings interpreting various Articles of the Constitution and decisions on some fundamental issues in education, such as, rights of the child, rights of minorities, schedule caste, scheduled tribes, medium of instruction, corporal punishment to children, management of private schools, recruitment, transfer and service conditions of teachers and other employees of the institution etc. have significant impact on the growth of education.

The development of the educational system in India has also been influenced by the recommendations of various commissions and committees during post independence period, the Five Year Plans, and National Policies on Education, besides the Legislations. In fact, various Acts reflect the recommendations of these committees and policies. Further, certain non-statutory bodies like Central Board of Secondary Education play crucial role in the development of education.

1. 2. Need of the Study

Social change may be brought about through a number of agents or agencies of change. Legislation is one amongst these, through which, any government seeks to bring about changes in existing systems and practices. For instance, during the post independence period the Government of India brought legislation to abolish privy purses of princes, abolish Jagirdari or bonded labour, remove untouchability and ban child marriage etc, which brought sweeping changes in social, political, economics and cultural scenario of the country. In the

context of education also, majority of states have tried to influence it through relevant state legislation.

The legal context of education infact reflects the history of relevant laws and current policies of the government. It helps to define the parameters of administrative powers in each jurisdiction and thereby determines the scope and authority of administrator's decision making about the provision of all aspects of schools. Therefore, it is imperative for educational planners and administrators to make themselves thoroughly familiar with the legislation on different levels of education. It is also essential for them to be aware of the decisions of judiciary and tribunals in disputes relating to various issues of education. However, a review of researches conducted on various issues related to education indicate towards the dearth of research in the area of legislation on education. Except for one or two stray efforts by researchers, this area remains unexplored. The present study tries to systematically trace the genesis of educational legislation in the country with specific reference to elementary education, its implementation and the extent of realization of constitutional promise in the context of free and compulsory education. It is expected to provide valuable information to researchers, teachers, educational planners and administrators regarding substantive laws relating to education along with procedural laws and cognate laws which have significant bearing on educational decision making and educational growth.

1. 3. Objectives of the study

1. To analyse the historical background of legislation on education in India.
2. To examine various Acts on education since independence
3. To analyse the implementation strategies adopted by the central and state governments to operationalise legislation
- 4 To assess the factors impeding implementation of legislation

1.4. Methodology

The study is a descriptive survey of historical nature, based on secondary data. A thorough review of Educational Acts and Codes of various states, recommendations of various commissions and committees, books, journals, periodicals, court cases and judgments have been done to analyse their influence in shaping the system of education in the country. Periodic expert group consultative meetings were held to review the material developed and further enrich it.

1.5. Delimitation of the Study

The description in the preceding section of this chapter indicates towards the voluminous nature of legislation on various sectors of education. Besides legislation, there are a number of state and central government's rules and regulations, office orders and large number of court judgments, which have influenced the system of education from time to time. There are also acts for various stages of education such as primary education, secondary education, higher education, vocational education, technical education, and teacher education etc. Due to time constraints it is difficult to include all these acts in present study. Therefore, the present study is limited to the analysis of legislation at the elementary stage only. Various issues related to primary education, such as, duration of primary education, admission policy, medium of instruction, management and administration of private schools and grant-in-aid system etc have been analysed in the study.

CHAPTER -II

Legislation on Education: The Historical Perspective

Education and its legal status in modern India could be fully appreciated only on the basis of a chronological analysis of events during the pre independence period leading to the Constitutional provision in this regard India had a fairly developed and wide network of indigenous schools in the beginning of the nineteenth century when the British administrators first began to reorganize the modern system of education These institutions had evolved through centuries and basically catered the needs of upper and middle classes of society They had elasticity of administration, and a child could enter the school at any time and any age and leave it as soon as he had mastered what he desired to learn and the school had to teach These schools adapted to the local conditions and needs Their vitality was so great and their hold on the life of the people so strong that they survived against the disruption of the Mughal regime The monitionai system of teaching prevalent in these schools was later on successfully introduced in England by the Reverend Doctor Andrew Bell On the other hand a second type of schools known as Madarsas were popular amongst the Muslim population and catered their need

However, education was prevalent amongst a small proportion of boys only and large proportion of population received very little or no education Girls by and large remained out of school system, though, some early official reports testify that few girls attended indigenous schools in Madras and Bombay Some castes among Hindus, later identified as the Scheduled caste, by the Indian Constitution, and people living in hilly and tribal areas remained outside the school system. Even among the remaining Hindu Castes very few boys attended indigenous schools The early official surveys show, that, the attendance of boys to the male population was 1 34 in Madras, 1 36 in Bengal, and 1 62 in Bombay respectively The concept of compulsory education was alien to the country

2.1 Legislation under East India Company

The foundation of modern education, as distinguished from the indigenous vernacular education system, can be traced to the efforts of the Christian missionaries. Consequently, the **Charter Act of 1813** of the East India Company forms the turning point in Indian education and may be considered as genesis of present education system. It was the first attempt under which British parliament directed the East India Company to accept responsibility for the education of Indian People. The section 43 of the charter of 1813 recommends.

“....a sum of not less than one lakh of rupees in each year shall be set apart and applied to the revival and improvement of literature and encouragement of the learned natives of India and for the introduction and promotion of knowledge of sciences among the inhabitants of the British territories in India”.

The Act, however, failed to clarify how the amount of Rs. One lakh should be utilized, which later on resulted in the major course of controversy between the Orientalists and Occidentalists. Later on, the Macaulay's Minute, 1835 provided a clarification of the section 43 of the charter Act 1813, according to which, it was left entirely on the discretion of the Government to decide how to spend the funds. The Minute further interpreted 'Literature' as including not only the Arabic and Sanskrit Literature, but also, the English Literature. Similarly 'Learned natives' included learned persons of English Language and literature also along with the Muslim Maulvis and Pandits of Sanskrit. Such interpretation of Charter Act 1813 was well in conformity with the spirit of McCauley's 'Filtration Theory' which considered, that, it is possible through English education to bring about a class of persons, Indian in blood and colour, but, English in tastes, in opinions, in morals

and intellect. Consequently the Government Proclamation of 1835 directed¹² "all government fund appropriated for the purpose of education would be best employed on English education alone." The proclamation was the first official statement of a definite policy with regard to the direction which government wanted to accord to public education

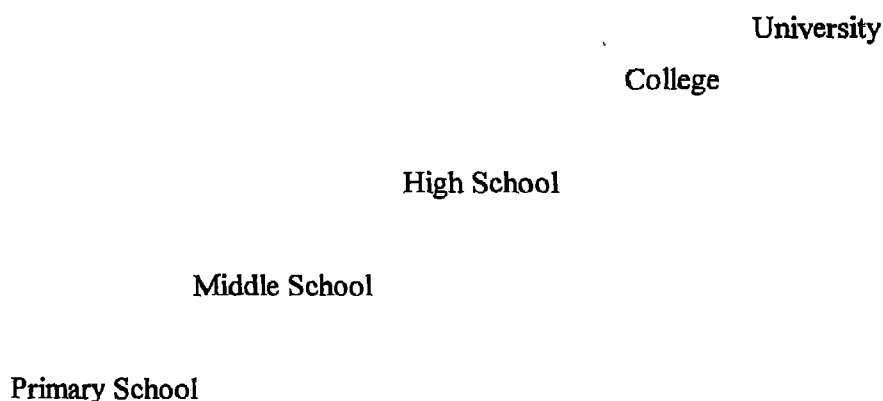
The downward filtration theory of Lord Maculay put an end to mass education and it was clearly stated in Auckland's Minute which came into existence in 1839. This minute clearly recommends, "Attempts of Government should be restricted to the extension of higher education to the upper classes of society who have leisure for study and whose culture would filter down to the masses".

It is obvious from the above description that, though the Charter Act, 1813 contributed in sowing the seeds of modern system of education in India, it also created a class of people distinguished from the masses and all efforts of Government remained concentrated at higher levels of education. Primary education of masses was left to voluntary efforts and to provincial governments. Consequently the number of secondary schools and colleges grew up very fast. They were managed, not only by the government, but, by local bodies and private organisations as well. As compared to this, primary education was greatly neglected. The Government transferred it largely to the control of local bodies. As written by Pandit Jawaharlal Nehru in his famous book *Discovery of India*, "The British had formed a new class in India, the English educated class, which lived in a world of its own, cut off from the mass of population, and looked always towards its rulers (pp 413-414)".

2.1.1 Woods Despatch (1854)

Another landmark in the history of Indian education which shaped the system of education in the country is the Woods Despatch of 1854, which is often treated as 'Magna Carta' of Education in India. Woods Despatch laid the

foundation of modern university system in India by establishing three universities in the presidency towns- Calcutta, Bombay and Madras, designed on the pattern of London University. The Despatch, expressing concern over the neglect of mass education suggested active measures for its promotion. The Despatch considered Arabic, Persian and Sanskrit as useful and gave it important place in the curriculum. Similarly, while emphasising on English as medium of instruction, the Despatch did not neglect the Vernacular Languages. It recommended "We look to the English Language and to the Vernacular Languages of India together as the media for the diffusion of European Knowledge". The Despatch, for the first time, detailed out the scheme of establishment of Graded Institutions which is still being followed in our country. This graded system was as follows.



The Despatch also laid the foundation of Department of Public Instruction in five provinces of India- Punjab, Bengal, Madras, Bombay and North-West Province by abolishing the existing Provincial Boards and Councils of Education and recommended the appointment of a Director of Public Instruction for the organisation and management of the Department of Public Instruction. The appointments of Assistant DPIs, Inspectors of Schools, and Asstt. Inspectors of schools were also recommended. These institutions and personnel still continue to play important role in the administration of school education in the country.

Another significant contribution of the Despatch of 1854 was the suggestion for a policy of grant –in- aid to private institutions on the pattern of British system. Earlier, in 1852, a suggestion for levying a cess of five percent on land revenue was made by Captain Wingate, the Revenue Survey Commissioner in the state of Bombay to utilize part of its proceeds for compulsory education of children of agriculturists. Between 1861 and 1871, almost every state in British India levied cess on land revenue for general local purposes, including education.

The Despatch, for the first time, emphasized the need of formal training of teachers. It recognized the deficiency in the facilities for the teachers' training and desired to see the establishment, with as little delay as possible, of training schools. It also suggested scholarship for pupil teachers during the period of training and better salary to teachers with the objective to make teaching profession more attractive. Consequently, normal schools for training primary school teachers were established in each Presidency, making formal official acceptance of teacher training as an integral part of Indian education system.

2.2 Legislation on Education Under Colonial Rule

The revolt of 1857 had shaken the very foundation of British empire in the country and the administration of the country was transferred from the East India Company to the British Crown. By 1882 it was considered necessary to review the development of education in the country. As a result, the Indian Education Commission, under the Chairmanship of William Hunter, was appointed. The Commission expressed concern over slow progress of primary education and stressed that primary education should be related to life and should be practical and useful. The medium of instruction at this level should be the mother tongue. Following the method adopted in England under the Education Acts of 1870 and 1876, the Commission placed the responsibility of primary education on District Boards, Municipal Boards and Town Area Committees, thereby making the

Government free from its responsibility. It considered the indigenous schools very useful for imparting primary education and recommended financial grants for them.

The Commission realized the necessity of opening training schools for teachers, and suggested that, i) Training schools should be established at such places from where trained teachers may be made available for the areas where there are no trained teachers. There should be at least one normal school under the jurisdiction of each inspector of schools, ii) Inspector of schools should take personal interest in the maintenance and administration of normal schools, iii) Reasonable grant should be provided to these schools.

The recommendation of shifting the responsibility of primary education to local bodies, though, generated enthusiasm in the beginning, it proved to be counterproductive. The Commission recommended that a system of payment by results may be adopted in dealing with indigenous schools. This led to domination of system of grant-in-aid to primary schools in all the provinces and gave a set back to indigenous schools. At many places they were merged in the government schools and lost their identity. As the local boards did not have sufficient funds to support primary education, its progress suffered as compared to other stages of education, which received government funds.

The dawn of twentieth century is characterized by a strong wave of national awakening in the masses. Indians started to realize that their education should be of a national character. It was under these circumstances, that, Lord Curzon came to India in 1899 as the Viceroy of the Country. On March 11, 1904 he published his educational policy in the form of a Government Resolution. Popularly known as **Government Resolution on Educational Policy (1904)**, it analysed the defects in the Indian educational system and put forth valuable suggestions for quality improvement in education. With regard to primary education, it was admitted in the Resolution, that, despite expansion it was insufficient in view of the vast

population of the country. It was also confessed that Government had neglected it in favour of secondary education. The Resolution put forth various suggestions for expansion of primary education such as: A clear cut financial policy should be followed in the sphere of primary education, Local boards should be directed to spend the educational funds exclusively on primary education instead of higher education, the salary of teachers should be increased, and method of teaching should be simplified and rendered more practical.

The most significant recommendation of the Resolution was in the context of medium of instruction. **It said that as a general rule a child should not be allowed to learn English as a language until he has made some progress in the primary stages of instruction and has received a thorough grounding in his mother tongue.** It even stressed on the use of mother tongue as medium of instruction at secondary level. Lord Curzon's reforms, though useful, raised suspicions in the mind of educated Indians, because of the way in which he suggested these reforms. They thought that this reform move camouflaged some deep political motives (Basu)

2.2.1 Indian National Movement

The Indian National Movement played crucial role in the context of development of education in the country. Since 1880, a number of Indian leaders began stressing the need of education for all, which was further strengthened by establishment of Indian National Congress in 1885. A bold experiment was launched in the State of Baroda by Maharaja Sayaji Rao Gaikwar who was firm believer of universal education. He introduced compulsory primary education in the Amraeli division of his state in 1883, and encouraged by its success generalized it for whole state in 1906, through a legislation.

The Baroda experiment exploded the myth that universal compulsory education was not applicable in Indian conditions. In 1911 the literacy rate of Baroda was lower than Bombay, but by 1921, it increased tremendously and Baroda occupied the third place in the literacy map of India, the first two being Travancore and Cochin. According to the 1941 census, the percentage of Literacy in Baroda was 23% as against 48% in Travancore, 35% in Cochin and 20% in Bombay. The female literacy in the state was quite encouraging. This achievement was the result of the drive to enforce compulsory education and rigorous enforcement of the Child Marriage Prevention Act. It established that, the laws if enforced strictly and honestly, can show encouraging results. However, there are other socio-economic factors, which influence the effective enforcement of laws, and there is no better example of such paradox than Travancore and Baroda. In spite of legal compulsions for primary education, Baroda could not come near Travancore in terms of its literacy percentage, mainly, due to the poor socio-economic status of people and non-availability of school facilities in all small villages. Poor economic status of parents prevented sending their children to schools and with no provision for any part time instructions, children remained out of schools. While, due to higher general social background, no taboos against girls' education and larger Christian population with favourable attitude towards education, Travancore superseded Baroda in terms of literacy rate. It may, therefore, be concluded that mere laws on education may not automatically guarantee its effective implementation. Favourable social and economic conditions are pre requisite for any drive of mass education.

From 1905 to 1921 significant progress in all stages of education had been reported. A number of policies and legislation were enacted during this period to cater to the needs of various levels of education. Lord Curzon's educational policy, Indian University Commission (1902), Government Resolution on Educational Policy (1913) helped in spreading a network of schools and colleges through out the country. Primary education which remained a neglected area till now, seemed to

attract the attention of authorities. The most notable resolution during this period was Gokhale's Resolution on Indian Education (1911)

2.2.II Gokhale's Bill 1911

The national movement brought out the question of mass education in the forefront. Sri Gopal Krishna Gokhale believed, that, an illiterate and ignorant nation can never make any sound progress and must fall back in the race of life. He, therefore, moved a resolution in 1910, as a member of the Imperial Legislative Council for free and compulsory elementary education throughout the country. He pleaded that universal, free and compulsory education was essential for development of the country and the Government should provide adequate funds for this purpose. The important suggestions contained in the resolution were as follows

- a) In the areas, where 35% boys were receiving education, elementary education should be made free and compulsory. This provision should apply to age group of 6 to 10 years
- b) The cost of primary education should be shared by the provincial Government and Local bodies in the ratio of 1 : 2
- c) A Secretary should be appointed to organise, supervise and look after the primary education
- d) There should be a separate Department in the Central Government to draw up a scheme for the expansion of primary education

The resolution was withdrawn on an assurance from the Government that the matter shall be considered seriously. However as the government failed to keep its promise, in 1911 a private bill was introduced by Gokhale in the council. The object of the bill as described by Gokhale was to provide for the gradual introduction of the principle of compulsion into the elementary education system of the country. The provisions of the bill included

- 1) Compulsory primary education in areas where a certain percentage of children were attending schools,
- 2) Local bodies to be authorized to introduce compulsory education in their areas
- 3) Local bodies to be authorized to levy cess to meet the cost of free and compulsory primary education
- 4) Expenditure on education to be shared by Local bodies and Provincial Government in ratio of 1 2,
- 5) Compulsory primary education for boys and girls of the age group of 6 to 10 years, and provision of penalty for defaulting guardians,

The bill was rejected by 38 votes by 30. However it focused the attention of the entire country on primary education, and between 1910 and 1917, there was an unprecedented expansion of primary education on voluntary basis. The laws providing for compulsory primary education, enacted by different provinces between 1916 and 1921, are landmarks in the field of school education.

2.2.III Patel's Bill (1917)

The credit to introduce first successful bill on compulsory education through an Indian legislation, goes to Sri Vithalbhai Patel in 1917. He moved the bill in Bombay Legislative council. It was broadly based on Gokhale's bill but was restricted to only municipal areas whereas; Gokhale's bill was for rural areas. Another difference between the present bill and the earlier 1911 bill was, that whereas Gokhale insisted that the Government should bear two-third of total expenditure on compulsory education, Patel left it on state government's discretion to provide grants-in-aid for schemes of compulsory education. The bill was passed and became law in 1918. Popularly known as Patel Act, it was the first legislation to accept the principle of compulsory education. The Government of India Act 1919, which closely followed Patel Act 1918, empowered the Indian Ministers to

direct the elementary education of the masses in a Larger measure than before. The objective of universal education became a direct responsibility of popular ministers and state legislatures. Consequently, a number of initiatives were taken to place the responsibility of primary education on the local bodies and promote universal education. These local bodies were even empowered to levy cess to meet the expenses of education.

The Government of India Act of 1919 introduced Diarchy in Provincial administration and education was made a 'Transferred subject' meaning, thereby, that its administration was handed over in every province to Indian Ministers elected by the people. This had given a face lift to the idea of compulsory education, which was legalized with the passage of Patel's bill in the provincial legislature providing for compulsory primary education in all municipal areas of Bombay province (except the city of Bombay). This had started a chain of similar bills passed in all the provinces of British India within the next few years. A number of states enacted their own legislations in the area of primary education in the years, which followed. These Acts include Kolhapur Act (1917), Bengal Primary Education Act (1919), United Provinces Act (1919), The City of Bombay Primary Education Act (1920), Madras Elementary Education Act (1920), The United Provinces (District Boards) Primary Education Act (1926), The Central Provinces Primary Education Act (1920), Compulsory Education Act, Baroda (1926), Bengal (Rural) Primary Education Act 1930, Bihar and Orissa Primary Education Act 1919, The Punjab Primary Education Act 1940, and Mysore Act (1931) etc. Most of these laws were based on Gokhale's bill or Patel Act's and had many common features, for instance, the responsibility for introducing compulsory education had been entrusted on local bodies under all these laws. Going a step further the Bombay Act of 1923 recommended, that, the government may direct the local bodies to take initiative or fix a time limit for the performance of the duty in case the local body fails to introduce compulsory education. All these acts emphasised voluntary attempts in the area of compulsory education. Another

common feature of these acts was the assumption, that, compulsory education should be first applied to boys and then extended to girls. Likewise, considering the Governments' unwillingness to bear any financial liabilities of primary education, the earlier Acts left the issue of grant in –aid to the discretion of state governments however, with the shift in union governments' policy towards primary education the provision for statutory grant finds mention in later acts. The period of compulsory education also varied from one act to another, and, while in some Acts the period of primary education was limited to four years, in others, it was of five years duration.

These Acts made it compulsory for each and every parent to send their children of 6-10 years to schools, failing which they were made liable to be punished. These Acts generally entrusted authority on Magistrate in urban areas to penalise and prosecute parents who failed to send their children to schools, while in rural areas, the village Panchayats were entrusted with such powers. These Acts also had the provision of penalties imposed on parents for not sending their children to schools. The Bengal (Rural) Primary Education Act, 1930, for instance, prescribed highest fine of Rs. 50, followed by Punjab of Rs. 15. The fine in other states varied from eight annas to Rs. 5/- The *dediem* fines were also provided for in the Bombay Primary Education Act (1947), the Bengal Primary Education Act (1919), the U P Primary Education Act (1919,1947). The U P (District Boards) Primary Education Act (1926) and the Baroda Compulsory Education Act (1926).

Similarly all compulsory education Acts prohibited employment of children, which interfered with their education. The Bombay Primary Education Act (1947), for instance under its section 36 makes a provision for a fine not exceeding 25 rupees for person who employs a child in a manner which interferes with his education. All other Acts mentioned above have also made such provision except Assam, Madras and Punjab Acts.

Though the Government of India Act 1919 made education as a Transferred subject, finance was kept as a reserved subject, with the result that due to financial constraints much progress could take place. Besides, governors of the provinces had been given unlimited powers and they could even interfere in transferred subjects. All these created a difficult situation for the education and resulted in lots of dissatisfaction among people. The growing political dissatisfaction among people and demand for dominion status by the Indian National Congress made it necessary to relook the educational policy of the government and subsequently Hartog Committee (1929) was appointed. The committee expressed its concern over wastage and ineffectiveness in the educational system in India. The Committee for the first time, defined the terms 'wastage' and 'stagnation' in primary education. The meaning of these terms as defined by the committee still continue to be the same. According to the committee 'wastage' means the premature withdrawal of children from school at any stage before the completion of the primary course. Defining stagnation the committee said, "By 'stagnation' we mean the retention in a lower class of a child for a period of more than one year". The committee made comprehensive study of all stages, of education and gave its recommendations for all these stages including the secondary education, higher education, vocational education, education of women and education of the muslims etc.

In 1921 a 'Central Advisory Board of Education' had been established. But due to financial difficulties it was unable to function effectively. As a result of Hartog Committee Report, it was revived in 1935. This board recommended technical and vocational education along with education of liberal arts. With the end of Diarchy system through the Government of India Act 1935, popular governments came into existence. By 1937, the division of subjects into 'Reserved and Transferred' list had been done away and all subjects were handed over to the Ministers for administration.

The **Government of India Act 1935** divided all educational activities into two categories- Federal or Central, and State or Provincial

a) Federal Subjects included:

- 1) The Imperial Library, Calcutta, the India Museum Calcutta, the Imperial War Museum, The Victoria Memorial, Calcutta, and any similar institution controlled or financed by the federation
- 2) Education in the Defense forces,
- 3) The Banaras Hindu University and the Aligarh Muslim University
- 4) Preservation of ancient and historical monuments,
- 5) Archeology, and
- 6) Education in Centrally Administered Areas.

b) State or Provincial Subjects.

All matters regarding education of all other categories, other than those included in the federal list, were regarded as Provincial subjects.

This period may be called as educational renaissance as various projects were initiated during this period, such as Literacy movement, Adult education movement, education of women and untouchables etc

The outstanding features of 1925 to 1937 have been, the influence exerted over educational policy, by the provincial legislative councils and by non-official bodies, and the devolution of control in education, mainly to local self-governing bodies

Every government, both provincial and central, through bills, resolutions, budget discussions and questions in its legislature paid constant attention to educational policies in India. Consequently, the educational scenario of the country marked a significant progress. Greater attention was paid during this period towards mass education, women's education, physical education and the educational needs of special communities. The transfer of education to popular control accelerated the progress of education. In addition to the transfer of control in Primary and Secondary education, a number of steps had also been taken to bring general public into more direct contact with some aspects of educational administration. Advisory Boards for various branches of education had been appointed in many provinces, they included Boards for Secondary Education, such as, the District Secondary Education Board in Madras, School Board in Burma, Vernacular Education Board in the United Provinces, University Boards, such as, the Advisory Committee for Higher Education in Bengal, and special boards for subjects like oriental studies, text books etc.

With the shifting of education as a transferred subject the provincial governments got the opportunity to exercise greater control over education in their states. Consequently each local government developed its own department of public instruction, which exercised administrative and inspectional functions of all educational institutions, and in addition executive functions in regard to government institutions. In some provinces, the boards of secondary or intermediate education had also been set up, and thereby, relieved universities from these responsibilities. Besides legislation, the government had also framed a number of rules to exercise control over education.

The Directorate of Public Instruction was also established during the pre independence period, in almost each province, with Director of Public Instruction (DPI) as its administrative head, who acted as advisor to the Education Minister. He exercised control over the inspecting staff and the teaching staff of government

institutions, and was responsible for enforcing educational rules and regulations and providing grant-in-aid to educational institutions

However, inclusion of education as provincial transferred subject by the Government of India Act(1935) resulted in isolation of the Government of India from Provincial Governments, and of Provincial governments from one another in the field of education. Consequently there was no coordinating agency which could give a country wide picture of common problems, such as, free and compulsory education, education of girls, education of special class and communities, provision of trained teachers, management and financing of mass education and the provision of educational services etc. Each province had adopted a separate policy and strategy for dealing these issues of national importance. The Central Advisory Board, during its short lived existence, considered many important subjects as the education of European and Anglo-Indians, control of degrees, standardization of equivalence of examinations, technical and vocational education, and relationship between universities and educational services etc.

In 1937 Mahatma Gandhi infused a new life in elementary education through his Wardha Scheme or Basic Education Scheme(1937). However, the political situations arising due to the outbreak of World War second, which forced the Indian Ministers to resign as protest against the Government's Policy curtailed the growth of education. **The Post War Plan for Educational Development** popularly known as '**Sergeant Plan (1944)**', which followed the second world war, made comprehensive recommendations for reorganization of education at all levels including primary, secondary, higher, teacher training, education of handicapped, medium of instruction, technical, industrial and vocational education and education of the adults etc. In the context of elementary education the report recommended free and compulsory education for all children between 6 and 14 years. The report maintained, that in almost every country, compulsion, when first introduced has been met by opposition, mostly from the very quarters, which it was

especially designed to benefit. It is hardly surprising that poor peasants and laborers should be reluctant to sacrifice any contribution which can be expected from their children towards the livelihood for the family, but, at the same time, there must be something seriously wrong with the economic conditions if the budget of even the poorest family is dependent on the earning of little children. It is encouraging to note from the experience in other parts of the world that no nation which has once been given a public system of education, however imperfect it may be, and whatever the opposition to it in the beginning, would now submit to be deprived of it. The primary or Basic schools had been divided into two stages: a) Junior Basic Schools including children from 6 to 11 years of age with provision for compulsory education; b) Senior Basic Schools for children of 11 to 14 years of age.

The report also emphasized on the need of improving the pay scales and service conditions of teachers, and for the first time drew the attention of Government towards the education of the handicapped.

To summarise, the review of legislation on compulsory education during pre-independence period reveals, that, these Acts may be divided into two distinct time periods. The first period started with Gokhale's bill in 1911, which, though rejected, but provided the genesis for legislation on compulsory education in India. The period continued upto 1919-20 before the transfer of education to Indian control. With this transfer the second phase in the history of compulsory education in India may be said to have begun. A number of primary education acts were passed during these two phases, which are as follows:

Table-I: Compulsory Education Laws passed between 1919-47

S.No.	Title of the Act	Year of Passing
Ist Phase(1911-1919-20)(4 Acts were passed in 1919 and 3 in 1920)		
1.	Patel Act	1918
2.	The Bengal Primary Education Act	1919
3.	The Bihar and Orissa Primary Education Act	1919
4.	The Punjab Primary Education Act	1919
5.	The United Provinces Primary Education Act	1919
6.	The Central Provinces Primary Education Act	1920
7.	The Madras Elementary Education Act	1920
8.	The city of Bombay Primary Education Act	1920
II Phase (1921-1947)		
1.	The Bombay Primary Education Act (This Act repealed the Patel Act. It was amended in 1938 and later on replaced by the Bombay Primary Education Act, 1947)	1923
2.	The United Provinces (District Boards) Act	1926
3.	The Assam Primary Education Act(This Act was later on replaced by the Assam Primary Education Act 1947)	1926
4.	The Bengal (Rural) Primary Education Act	1930

Besides these acts which were passed by the British India, many princely states had taken the lead and initiative to provide compulsory education through legislative measures which have been discussed earlier in this chapter, such as Baroda in 1893, and Mysore in 1913. The Mysore Act was later replaced by the Mysore Elementary Education Act 1941. Kolhapur passed an Act in 1917, Patiala in 1926, Bikaner in 1929, Jammu and Kashmir in 1934 and Cochin in 1947. Gondal in Gujarat passed a law which was exclusively meant for girls only on the

pretext, that boys were already getting education and therefore, required no such law

Significant features of these Compulsory Education Acts are as follows

2.3 Scope and Coverage of Acts

A review of the acts during pre independence period reflects their limited scope and coverage By 1921, only 8 municipalities had introduced compulsory education-five in Bombay, two in Punjab and one in Bihar and Orissa By 1926-27 /114 urban areas and 1517 rural areas came under compulsion which increased 153 and 2,977 in 1931-32, and 167 and 3034 in 1936-37 respectively By 1936-37 a total of 13072 villages were covered under the provision of compulsory education At the time of independence in 1947 the provision of compulsion was introduced in 176 towns and 11779 villages only The number of villages under the provision of compulsion reduced considerably in 1947 due to partition Bombay (20 towns and 617 villages), Central Province (34 towns and 1031 villages), Madras (26 towns and 1182 villages), Punjab (35 towns and 4984 villages) and United Provinces (36 towns and 1617 villages), undertook effective steps to introduce compulsion In Bengal, the Act introduced compulsion in a part of Calcutta city only ignoring rural areas completely, while Assam passed two Compulsory Acts in 1926 and 1947, but due to various reasons could not introduce compulsion even in a single area Therefore, even the Acts on compulsory education had been passed in many states and provinces before independence, there was not a single evidence of any Act which covered the entire state, and these Acts remained confined to a particular area only

Another significant feature was that these acts did not uniformly apply to boys and girls both While Patel Act, Central Provinces Primary Education Act, and City of Bombay Act included both boys and girls under the provision of compulsion, the Bengal, Bihar and Orissa, and Punjab Acts were applied to boys

only United Provinces Act recommended introduction of compulsory education first for boys for a period of at least two years after which it may be extended to girls also. Nevertheless, it was the first act in the northern India to include girls also under the provision of free and compulsory education.

2.4 Years of Compulsory Education

The age of compulsory education varied from Act to Act. Gokhale's Bill prescribed age of compulsion from 6-10 years, which was accepted and adopted by Bengal, Bihar and Orissa Act. While Patel Act, Madras Act, United Province and City of Bombay Act fixed the age of compulsory education at 6-11 years. Punjab Act accepted the age group 6-11 years, however, adopting a flexible approach left it to the local authorities to change it from 7 to 12 years. As indicated earlier, compulsory primary education was not introduced in the province of Assam and in the centrally administered area of Ajmer, Mewar, Bangalore and Coorg. The United provinces (District Boards) Acts (1926) introduced compulsory education for all children in the age group 6-11 years (except in case of Muslim girls for whom the age limit was (5-9 yrs). Similarly Bengal (Rural) Act (1930) prescribed the age group of 6-11 years for compulsory education. This Act was applicable on boys and girls both.

2.5 Educational Cess

The review of compulsory education acts reveals that in many acts there was the provision for educational cess to meet the requirements of free and compulsory education. The idea of introducing local cess originated in 1851 in the United Provinces (U P) where the then Lieutenant Governor Mr. Thomason first levied a cess of one percent on land revenue for the support of primary schools. The idea soon became popular and between 1861 and 1871 almost every state in British India levied a cess on Land revenue for general local purpose, including education. Later on, during 1920s, in order to overcome the financial pressures due

to increasing demands of education, many provinces, particularly, Madras and Bengal started to levy educational cess. The Bengal Act authorized the municipalities to levy an education cess if the existing resources were not sufficient to meet the cost of primary education which may or may not be free or compulsory. This was a new provision and marked an advance over Patel Act. However, going a step further, the Bihar and Orissa Act made it mandatory that whenever an education cess was levied, primary education should be free. U.P. Act even empowered the municipalities to levy a new tax or to increase an existing tax in order to meet the cost of compulsory education. Similar provisions were made in City of Bombay Act and Punjab Act also.

Besides the provision of education cess to meet the cost of compulsory education, another major source has been the grant in aid from the provincial government which was emphasized by the Gokhale's bill and which was the main cause of its rejection. Patel Act did not demand provincial Government's assistance for compulsory education. Consequently, the education acts which followed, differ from each other on the provision of grant-in-aid from the provincial Government. Bengal, Bihar and Orissa, and Punjab Acts, therefore, made no reference of any such grant, though, the Punjab government volunteered to share the cost of primary education while passing the legislation. The Central Provinces and Madras Acts, however, accepted the need of such grants. But while the Central Provinces Act recommended that their rate shall be fixed by rules under the Act, the Madras Act made provincial grants both determinate and statutory.

2.6 Responsibility of enforcing Compulsory Education

Majority of acts, passed between 1918 to 1947, advocated transfer of powers of administration and control of primary education to local authorities, i.e. the local self government institution, which were entrusted with the responsibility of making adequate provision for primary education. These local bodies were directed to assess the need of their area and prepare schemes for the expansion and

development of primary education under their jurisdiction. However, the experience of the administration of compulsory education laws between 1918 and 1923, showed, that local bodies by and large lack the initiative and enthusiasm to introduce compulsory education and if a local body failed to introduce compulsory education, government, which had only the veto power could do nothing. It was, therefore, gradually realized that government should share greater administrative control with regard to implementation of compulsory education. Consequently, The Bombay Act (1923), taking a bold step, authorized government, under section 10(2) of the Act, to call upon local bodies to prepare scheme of compulsion within specified period, failing which, it empowered the government, through section 26 to prepare and execute scheme of compulsory education through its own officers and to recover the expenses thereof from them.

The brief description of legislation on education in the first half of twentieth century is indicative of the significant role of legislation in the development of education at all stages. However, the earlier government efforts were more directed towards the secondary education, elementary education was left on voluntary efforts, or local bodies. The introduction of Compulsory Primary Education in Baroda, political awakening, and the Swadeshi Movement helped in rapid growth of elementary education. Gokhale's Bill, though rejected drew the attention of entire country towards the need for compulsory primary education with the result that successive years were flooded with Compulsory Education Acts. Bombay (1919), Bihar and Orissa (1919), and Madras (1920) are few amongst many Provincial Governments who enacted 'Compulsory Education Acts'. As the result of these Acts, and Acts which followed the later years of pre-independence period the number of primary schools and enrolment of children increased considerably. There were 1,55,017 Primary Schools in the Country in 1921-22 which increased to 1,84,829 during 1926-27. The corresponding increase in the enrolment of students at the Primary level, was from 61,09,725 in 1921-22 to 80,17,923 in 1926-27. There were 1,92,244 primary schools in the country, having an enrolment of 1,02,24,288

during 1936-37. At the time of independence 10525943 students were enrolled in 134866 primary schools. Due to partition the number of schools decreased in 1947. However, in spite of all these laws a large number of the seven hundred and odd princely states were educationally underdeveloped and did not have compulsory education laws. Even the provinces which had compulsory education Acts, reported very slow progress mainly because of the inability to establish suitable machinery to enforce the compulsory law, especially in rural areas. Very poor socio-economic status of parents which prevented them from sending their children to schools even if education was free and compulsory. Child marriage and child labour, discriminating attitude towards girls, schedule caste and schedule tribes, inability of school curriculum to relate to needs of life, rigid school time table which failed to adjust holidays according to the local requirement and lack of schools within walking distance of child were some of the other reasons for children not attending schools. Consequently, at the time of India independence only 18% of literate population and majority of school age children remained outside the school and their education was the major challenge for the country to overcome.

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CHAPTER-III

Legislation on Education: Post Independence Period

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The pre-independence era witnessed several initiatives towards compulsory primary education on a national wide scale. As discussed in the preceding chapter, though the principle of compulsory education had taken its root during pre independence time, the compulsory Acts passed by some states of India and their enforcement in practice remained ineffective due to social psychological and socio economic constraints and inadequate schooling facilities. Although compulsory attendance began to be enforced mainly after 1921, the idea of compulsory elementary education for children seems to have been evolved with modern elementary education itself. However, at the time of country's independence (1947) primary education was made compulsory in 176 urban areas and 11,779 rural areas. This chapter, which is devoted to the legislation on compulsory education during post independence period in India, provides succinct analysis of the evolution of existing compulsory education laws in the country during the last 50 years as well their enforcement in practice.

3.1 Constitutional Support

The Constitution of India promulgated soon after independence accepted the crucial role of education in the development of the nation and provided a legal base to education. Hence, the basic legal structure for the educational policies is the constitution. In its very preamble, the constitution promises to secure to all its citizens, 'Justice', 'Liberty', 'Equality' and 'Fraternity'. The Indian constitution is designed to aim at furthering the goals of social revolution. The core of the commitment of the social revolution lies in part III and part IV, in the Fundamental Right, and Directive Principles of State Policy. The constitution of India presents an impressive lists of rights of children under the ambit of different articles. Article 15(3) empowers the state to have special laws for the children.

After the achievement of independence compulsory primary education was given great importance in India constitution. The recommendation of the Sargent report for universal primary education found expression in constitutional provision for elementary education. The constitution enshrines a major legacy of freedom struggle viz free and compulsory education.

Realising the importance of elementary education as the most important compendium of democracy, our founding fathers added Article 45 to our national character, which is the reference point for legal sanction of universal education for all children up to the age of 14 years. The Directive Principle contained in Article 45 of the constitution enjoins that, “The state shall endeavor to provide, within a period of ten years from the commencement of the constitution, for free and compulsory education for all children until they complete the age of 14 years”. This broadly corresponds to the Article 26(1) of Universal Declaration of Human Rights which states, “Education shall be free at least in the elementary and fundamental stages”. The expression ‘the state’ of Article 45 is defined in Article 12 to include “The government and parliament of India and the government and legislature of each of the states and all local or other authorities within the territory of India or under the control of the government of India.” Article 41, treats the right to education without limiting it to children or to the particular stage. It expects the state to make effective provision for securing the right to education depending on its capacity and development.

There are special provisions for promoting education for the disadvantaged sections and backward regions and promotion of education of girls.

Various articles of the Constitution provide freedom to minority groups to keep intact their religious, cultural, and linguistic identities. Article 29 and 30 guarantees certain cultural and educational rights to establish and administer educational institutions.

Article 29(1) of the Constitution provides that “any section of the citizens residing in the territory of India or any part thereof, having a distinct language, script or culture of its own shall have the right to conserve the same”.

Article 29(2) lays down that “no citizen shall be denied admission into any educational institution maintained by the state or receiving aid out of state funds on grounds only of religion, race, caste language or any one of them”.

Article 30(1) enjoins “all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their own choice”.

While Article 30(2) lays down that “the state shall not discriminate against any educational institution in respect of grant-in-aid on the ground that it is under the management of a minority, whether, based on religion or language”.

Article 350 (A), directs the state to endeavor to provide adequate facilities for institution in the mother tongue at the primary stage of education to children belonging to linguistic minorities groups

Article 29,30 and 350 (A) of the constitution correspond to Article 27(1) of the Universal Declaration Article 15 and 46 safeguard educational interests of the weaker sections of the community Article 46 under Directive Principle of State Policy maintains that “the state shall promote with special care the educational and economic interests of the weaker section of the people, and in particular, of the Schedule Caste and the Schedule Tribes and shall protect them from social injustice and all forms of exploitation”

The constitution recognized the need of equal educational opportunities for all as the pre-requisite for the growth and prosperity of the nation Consequently, Article 15(1) and Article 16(1) make provision of the protection of the interest of the weaker sex While Article 15(1) recommends that the state shall not discriminate any citizen on the grounds only of sex Article 16(1) advocates equality of opportunity for all employment and appointment for all citizens’ men as well as women, in employment, or appointment to any office under the state Article 15(3) gives freedom to states to make special provisions for women and children

The Article 245 of the constitution of India set the limits of legislative power for the union and state governments Therefore, till 1976 only state laws existed for the provision and governance of mass education The 42nd Amendment Act (1976) of Constitution brought education into the concurrent list The center and state share the responsibility for educational development

In spite of education being in concurrent list, there has been no major disagreement between the center and the states on basic issues related to education In practice the central government has not enacted any law so far and the State Government continue to exercise their power to legislate on matters concerning school education Therefore, for all practical purposes, the legislative authority on school education remains to be concentrated in the state governments Consequently, the states have passed their own Education Acts to address various issues of education in the state Yet, it does not deter the Central government to allocate a specific section on education sector in the Five Year Plans. All the Nine Five Year plans for national development contain a plan for education sector also which provides direction to

educational growth in the country and the entire state legislature are framed within the broader framework of these five-year plans

3.2 Legislation on compulsory Education

The legislation on compulsory education got a new direction with the country's independence and promulgation of the Constitution. During post-independence period compulsory education was extended to different states. The most significant development during the post independence period was reorganization of states due to merging of Princely states in the British India Provinces. All the provinces which became Part – A states under the constitution of India, in 1950, had already passed compulsory education laws much before the constitutional provisions. On the other hand, erstwhile princely states, which become part-B and C states under the constitution had no such legislation in all cases. As stated, earlier, though many compulsory Acts, Laws were prevalent at the time of independence, in subsequent years, most of these Acts were amended from time to time, in the light of experience gained. Madhya Pradesh passed an act in 1950, Hyderabad, Ajmer and Vindhya Pradesh in 1952, Himachal Pradesh in 1953, and Saurashtra and Bhopal in 1956. Subsequently in 1959, a Regulation for compulsory Education was passed for Anadman and Nicobar Island. By 1960, there was a compulsory education law in the statute book of every state and union territory except Rajasthan (excluding Ajmer and Bikaner) and the union territories of Manipur, Tripura, Laccadive, Minicoy and Amindivi Island and all the centrally administrative areas.

As the outcome of the reorganization of states, many legislation prevalent in different princely provinces at the time of independence were repealed in favour of new education acts, for instance, the Madhya Pradesh Primary Education Act 1961 came into force repealing Madhya Pradesh Education Act (1956), Madhya Bharat Compulsory Primary Act(1952), Vindhya Pradesh Primary Education Act (1952) and the Bhopal state compulsory primary education act (1956). The Rajasthan Primary Education Act 1964(Act No 31 of 1964) repealed the earlier Bikaner Primary Education Act(1929) and the Ajmer Education Act(1952). Similarly in Andhra Pradesh, the area which was in the former Madras state was being governed by the Madras Elementary Education Act, 1920, while the Telangana area which was part of old Hyderabad state was governed by Hyderabad Compulsory Primary Education Act 1952. With the merger of these areas in Andhra Pradesh, these acts were repealed by the new Andhra Pradesh primary Education Act 1961 which uniformly applied to the entire state. The Gujarat

state was reorganized comprising parts of old Bombay state where the Bombay Primary Education Act, 1947 was in force, Baroda state governed by Baroda Education Act, Kutch and other old Saurashtra States Two Acts were passed in the state in quick succession First in 1956, the Saurashtra Primary Education Act was passed but it was later on replaced by the Gujarat Compulsory Primary Education Act in 1961

In other states also such exercises had taken place and many old laws were repealed to give way to new compulsory education acts, these include the state of Kerala, Mysore, Punjab, Uttar Pradesh and West Bengal etc

The progress made in the enforcement of compulsory education during 1951-61, the first decade of constitutional provisions, is presented below

PROGRESS MADE UNDER COMPULSION (1951-61)

Year	Number of areas under compulsion		Number of pupils under compulsion
	Towns	Villages	
1951-52	640	26,260	46,35,266
1952-53	652	26,601	47,52,196
1953-54	893	26,728	48,85,885
1954-55	998	31,775	54,28,962
1955-56	1081	33,554	60,87,412
1956-57	1194	43,467	63,26,217
1957-58	1314	50,823	68,34,227
1958-59	1198	51,900	72,96,355
1959-60	1212	53,440	79,81,007
1960-61	1257	58,815	85,30,338
1961-62	1676	1,21,763	97,35,799

The progress of compulsory education during 1951-61 reveals that the directive in Article 45 of the Indian Constitution, which came in force in 1950, to have free and compulsory education in India, was not fulfilled within a period of ten years. The areas under the compulsion or the number of pupils under this scheme were far behind the schedule. The Central Advisory Board of Education had felt that "education in the relevant backward pockets" should develop through provision of more facilities rather than through legislative compulsion. "(Annual Report, Union Ministry of Selection, 1965-66)

It needs to be highlighted that, as the dimensions of the legal enforcement of compulsory education, coercive measures were also taken (number of prosecutions for non-enrolment, non attendance etc) during the period 1961-66,

**STATISTICS OF COERCIVE MEASURES TAKEN FOR ENFORCEMENT OF
COMPULSORY EDUCATION (1951-61)**

Year	No. Of Attenda nce Officers	No. of Notices	No. of Orders Passed	Prosecutions for Attendance	Prosecutio ns for Non- Enrolment	Fines -realized in Rupees
1951-52	983	591,793	239,474	80,536	41,834	42,110
1952-53	1,005	592,279	201,765	89,152	31,128	37,651
1953-54	1,019	618,447	231,874	69,526	35,483	29,259
1954-55	827	626,467	223,498	67,736	35,549	24,958
1955-56	981	687,421	240,450	57,146	39,514	23,629
1956-57	892	781,924	268,671	56,971	39,755	20,785
1957-58	793	668,496	251,871	44,269	29,883	31,880
1958-59	761	697,834	236,908	47,621	27,376	14,483
1959-60	698	629,149	197,109	36,730	22,212	12,932
1960-61	699	573,921	202,026	33,648	20,795	26,534

Compulsory education was being operationalised by almost all major states till the middle of 1960's, but emphasis slowly shifted from "policy of compulsion" to "policy of persuasion". to achieve the target of universalisation of elementary education. The shift from compulsion to persuasion was very rightly highlighted in both the first and second National Seminars on Compulsory Primary Education. The seminar was of opinion that the penal measures of the compulsory education should not be over emphasized instead special measures for the compulsory education should be adopted to attract children to schools. These would include school meals, school health services, free supply of books and writing material, supply of uniforms, and educating public opinion (National Seminar on Compulsory Education, (1962)). The above analysis reveals that there was substantial shift in thinking and official pronouncement during the period 1950 to mid of 1960 in regard to enforcement of primary education.

3.3 Modernizing Legislation on Compulsory Education

The year 1960, witnessed the initiative to modernize the legislation on compulsory education. In 1960, a comparative study of all the existing compulsory education laws in the country was made by Ministry of Education. It strongly recommended that Acts have to be amended and modernized. It was realized that enforcement of these acts failed to succeed and achieve their objectives because of defective legal provisions, failure to establish effective machinery, trial of cases, recovery of fines, training of attendance officers and teachers, absence of research, unwillingness of local bodies to take prompt action etc.

In 1960, exactly 50 years after Gokhale had moved his resolution, Dr. K. L. Shrivastava, the Union Minister of Education, moved the Delhi Primary Education Bill in the Parliament. Its objective was to provide a compulsory education law for Delhi Union Territory but it also included upto date provisions regarding enforcement of compulsory attendance, which could be taken as a model by the states for amending their compulsory education laws. In the year 1961, a model Delhi Primary Education Act was enacted. Subsequently, government of Andhra Pradesh, Assam, Gujarat, Madhya Pradesh, Mysore, Punjab, Rajasthan and West Bengal brought their legislation up to date in the line with the Delhi Primary Education Act.

The main features of the amendments, which were prominently brought-out in the Delhi Primary Education Act

- (1) Made a duty of the authority administering elementary education to introduce free and compulsory primary education
- (2) Adopted the policy of both the alternatives of administering of compulsory laws by state and local body and relegated the state government with adequate powers to deal with recalcitrant local body which may fail in its duty of introducing or enforcing compulsory education
- (3) Provided that compulsory education would be extended to all parts of the country and applicable to both boys and girls Further it extended compulsory education to the age of 14
- (4) Provided grant in aid to the local body on account of compulsory education
- (5) Prescribed a simpler procedure for the enforcement of compulsory attendance, which emphasized the education aspects rather than the penal aspects of the law

There are differences in matter of details between the parent Delhi Act and the Acts of the other states All these Acts are founded upon an acute awareness of the situations that introducing compulsion (by enforcement of the Act) would require financial resources of an order which the state would be unable to find and that compulsion (and penalties for non-compliance) are non-enforceable in a situation where a large number of children of relevant age group are not attending school The Acts also recognize that children are often prevented from schooling due to economic factors The child is required to share the work of the family and can not be spared for the schooling time (Kalyana Krishnan, 1983)

3.4 Statutory Status to Educational Legislation

The Education Commission, which considered education in its totality was preceded by University Education Commission (1948) and Secondary Education Commission (1952-53) The commission accorded a highest priority to compulsory primary education to achieve constitutional commitments The commission's observations and recommendations served as valuable guideline towards evolving and enacting compulsory laws in our country

The Education Commission (1964-66) for the first time in the post independence period expressed concern over the variegated position of education legislation in the country and stressed on providing statutory status to educational legislations in the country. It expressed the need of setting up a "National Education Act" in the country. The Para 18.57 of Education Commission states:

"Educational Acts: At present, the educational legislation in the country presents a motley picture in most states, it is scattered in a number of laws and bulk of it is still in the form of executive orders, the only State to have an Education Act being Kerala. We, therefore, recommend that education should be given a statutory basis everywhere and in all states and that an Education Act should be passed in all states/UTs. This should be comprehensive and consolidated measure which will replace all the miscellaneous laws that now exist and which will also provide a statutory basis for certain important aspects of administration (for e.g. grant-in-aid code) which now exist in the form of executive orders" (paras 18.57)

"We also recommend that the Government of India should issue a statement on the National Policy on Education which should provide guidance to the State Government and Local Authorities in preparing and implementing education plans in their areas. The possibility of passing a National Education Act may also be examined" (Para 18.58)

In the light of aforementioned statement of the Education Commission it was expected that the subsequent National Policy on Education in 1968 will provide direction to educational legislations, however the policy did not include either any reference to legislative policy or even the need for evolving suitable legal basis for the organisation and regulation of educational services. However, in spite of no policy directions, states took their own initiative and brought out legislations covering different aspects of school education, such as Gujarat Education Cess Act (1972), West Bengal Urban Primary Education Cess Act (1963) as amended in 1973, Haryana Aided Schools (security of services) Act 1971

The Delhi Education Act was developed in 1973 with the objectives to serve as model of National Education Act envisaged by the Education Commission for other states of the country. However, the Act failed to serve as model act for the country as it suffered from many limitations. The act applies only to private schools, except for few provisions relating

to admission, fee, inspection of schools and regulations of education, the provision regarding inspection of school, medium of instruction, private tuitions, three language formula, working hour and teaching hours, promotion rules, contingent grant, admission to unaided schools, donations allegedly taken by schools etc, have not been fully implemented. Some important provisions like registration of schools are entirely missing from Act with the result that it is very difficult to identify the number of unrecognized schools in Delhi. The education acts of other states also suffer from similar types of limitations.

The recommendation of Education Commission, though, not resulted in framing a 'National Education Act' as a result, several state governments enacted legislation in the late 60s, 70s and 80s to make elementary education free and compulsory.

3.5 Present Status

Presently legislation for compulsory primary education Acts are available in nineteen states and union territories. These generally provide for

- 1 Power to state governments to notify the area in which the Act can be implemented
- 2 Penalties for not sending children to school.
- 3 Power in a vested authority to grant exemption from the legislation

i. Free Education

Presently education in Class I-VIII in all the government, local body and aided schools in all states and UTs of the country is free, barring Uttar Pradesh where boy's education in classes VII and VIII has yet to be made free. Education in schools run local bodies and private aided institutions is also mostly free. However, unaided institutions (3.7%) do charge fees. Other costs of education such as textbooks, uniforms, school bags, transport fee etc. are not borne by states except in few cases by way of incentives to children of poor families and those belonging to SC/ST categories. The reason being 96% of expenditure on Elementary Education goes in meeting the salaries of teaching and non-teaching staff.

ii. Compulsory Education

The Compulsory Education Act enacted in 19 States and UTs have remained unenforced due to socio-economic compulsions that keep the children away from schools. There is no central legislation making education compulsory. The consistent position has been that compulsion contemplated in Article 45 of the Constitution is a compulsion on the state rather than on the parents.

It needs to be highlighted that the purpose of these legislation is “to provide for free and compulsory primary education”. Compulsory education imposes obligation on parents, local authorities responsible for elementary education. Also the employers of labour are under an obligation not to employ children of compulsory age. The object of a compulsory law is to spell out the detail of these obligations, to specify the penalties for the failure to fulfill their obligations. Even though, these legislation are known as “Compulsory Education Acts” (CEA), they enable the local authorities to make education compulsory. Hence, the Compulsory Education Acts in India are merely ‘enabling’ legislation.

COMPULSORY EDUCATION ACTS IN FORCE IN STATES AND U.T OF INDIA

S. No.	State/U.T	Name of Act
1	Andhra Pradesh	Andhra Pradesh Act 1982 (Act No 1 of 1982)
2	Assam	The Assam Elementary Education (Provincialisation) Act, 1974 (Assam Act No 6 of 1975)
3	Bihar	Bihar Primary Education (Amendment) Act 1959 (Bihar and Orissa Education Act (1 of 1919) as amended by Bihar Act XVI of 1939 and Bihar Act XVI of 1946 and Bihar Act IV of 1959)
4	Goa	The Goa Compulsory Elementary Education Act, 1995 (Goa Act No 4 of 1996) The Goa School Education Amendment Act 1999
5	Gujarat	Gujarat Compulsory Primary Education Act 1961 (Gujarat Act No XLI of 1961)
6	Haryana	Punjab Primary Education Act, 1960, No 39 Haryana School Education Act, 1995
7	Himachal Pradesh	The Himachal Pradesh Compulsory Primary Education Act 1953 (Act No 7 of 1954)
8	Jammu and Kashmir	The Jammu and Kashmir Education Act 1984 (Act No XI of 1984)
9	Karnataka	The Karnataka Education Act 1983 (Karnataka Act No 1 of 1995) (First published in the Karnataka Gazette Extraordinary on the Twentieth day of January, 1995)
10	Kerala	The Kerala Education Act 1958 (Act No 6 of 1959) (As amended by Act 35 of 1960, 31 of 1969 and 9 of 1985)
11	Madhya Pradesh	The Madhya Pradesh Primary Education Act 1961 (Madhya Pradesh Act No 33 of 1961)

12	Maharashtra	The Bombay Primary Education Act 1947 (Bombay Act No LXI of 1947)(As modified up to 30 th April, 1986)
13	Orissa	Orissa Basic Education Act 1951 No 18
14	Punjab	Punjab Primary Education Act 1960 No 39
15	Rajasthan	The Rajasthan Primary Education Act 1964 (Act No 31 of 1964)
16	Tamil Nadu	The Tamil Nadu Compulsory Elementary Education Act 1994 (Act No 33 of 1995)
17	Uttar Pradesh	United Provinces Primary Education Act 1919 (U P Act No 7 of 1919) United Provinces (Dist Boards) Primary Education Act 1926 (U P act No 1 of 1926) Adapted and modified by the Adaptation of Law Order 1950
18	West Bengal	West Bengal Primary Education Act 1973 (West Bengal No 43 of 1973)
19	Delhi	The Delhi Primary Education Act 1960 (Act No 39 of 1960) The Delhi School Education Act (1973)

3.6 Compulsory Education Acts: Provision relating to specific areas

A preliminary scrutiny to various State Education Acts reveals that these acts encompass the entire spectrum of education from opening of new schools, admission and fees, norms for appointment of functionaries at different levels of schools, their service conditions, qualifications and transfer, parents responsibility, attendance order etc

Regulatory and Developmental Structure

Various Acts enacted by the state government have authority to regulate matters relating to school education

Delhi School Education Act (1973), West Bengal Primary Education Act (1973) and Goa School Education Act (1984) state in their preamble to provide for better organization and development of school education. For instance, West Bengal Act (1973) in its preamble very clearly states “it is an Act to make better provision for the development, expansion, management and control of primary education with a view to making it universal, free and compulsory”

Delhi Education Act (1973), Andhra Pradesh Education Act (1982) and Jammu and Kashmir Act (1984) have the provision for setting up an Advisory Board for the purpose of advising the administration on matters of policy related to education

It is also note worthy that Assam Elementary Education (Provincial Act) Act, 1974 authorizes the state government to frame curriculum as well as also the duration, syllabi, administration, supervision and inspection of elementary education

The Karnataka Education Act, 1983 in its objective states that “whereas it is considered necessary to provide for the planned development of educational institutions, inculcation of healthy educational practice, maintenance and improvement in the

standards of education and better organization, discipline and control over the educational institutions in the state with a view to fostering harmonious development of the mental and physical faculties of students and cultivating a scientific and secular outlook through education . The objective of primary education at the primary level by comprehensive access – through formal, non-formal, development of certain basic skills, life skills, development of values, attitudes etc” It is indeed worth mentioning that the Karnataka Education Act very clearly reflects the objectives of education at the primary stage. It explicitly states that the objective of the primary education shall be the universalisation of education at the primary level by comprehensive access- through both formal and non-formal means.

It is ironical that, though the acts have developmental objectives towards achieving Universalisation of Elementary Education, the implementations have not risen above routine matters.

Admission to schools and Fees

Compulsory education Acts of different states have clear mention of age specification for admission to school and fees to be levied by aided schools The Goa School Education Act(1984) states, “A child who has not attended the age of five years on or before the “1st day of June,” by (Amendment) Act 1999 (Act 9 of 1999) (O G Series I No 28 dated 07.10.1999) of the year in which the admission of such child is sought shall not be admitted to class I, or an equivalent class or any class higher than class I, in a recognized school” The age of a child, for the purpose of this Act shall be computed in terms of years completed by the child on or before the first day of the academic year.

Further, Delhi Education Act (1973) also specifies that “a child who has not attained the age of the five years, shall not be admitted to class I, or an equivalent class or any class higher than class I, in a recognized school Further, it has clarified that, a student seeking admission for the first time in a recognized school in a class higher than class I shall not be admitted to that class if his age reduced by the number of years of normal school study between that class and class I or an equivalent class, falls short of five years.

Admission to a recognized school or to any class thereof shall be regulated by rules made in this behalf ”

Hence the law expects a child to attend school from the prescribed age. One important point to be noted is the manner in which the age of children is to be computed. Corresponding to the constitutional provision of free education at the elementary stage, the education Acts have made provisions accordingly.

It is evident from Goa Education Act “under sub-section (6) of Section 9 has been made in respect of any area, no fee shall be levied in respect of any child for attending an approved school, which is under the management of the Government or a local authority in that area ” it has further specified that fees may be levied from any such child at any other school situated ~~in~~ that area.

Similarly Delhi Education Act (1973) categorically mentions that, “No aided school shall levy any fee or collect any other charge or receives any other payment except those specified by the Director

Every aided school having different rates of fees or other charges or different funds shall obtain prior approval of the prescribed authority before levying such fees or collecting such charges or creating such funds ”

Establishment, Recognition, Management of and Aid to Schools

For establishment, recognition of schools all most all states have the similar mandate that

- 1 Establishing and maintaining educational institutions
- 2 Permitting any local authority to establish educational institutions and maintain them according to such specification as may be prescribed
- 3 Taking, from time to time, such other steps, as they may consider necessary or expedient

All the Acts have provisions for providing aids to recognized private schools, such sums of money, as that government may consider necessary

Establishment, Maintenance, etc, of Schools by Local Authorities

The role of local authorities in establishment, maintenance of school and enforcement of compulsory law had its roots from pre-independence period. For instance, Andhra Pradesh Education Act (1982) states, "Every Municipal Corporation or Municipal council shall make a provision for education up to the end of the secondary education stage in the area within its jurisdiction for all children in the prescribed age group ordinarily resident therein and shall undertake the management of pre-primary, primary and secondary education schools taken over by the Government and entrusted to it

Every Mandal Praja Parishad shall be responsible to establish and maintain pre-primary and primary schools in the area within its jurisdiction and shall undertake the management of such Government and take over aided pre-primary and primary schools as deemed necessary

Every Municipal Corporation, Municipal Council, Zilla Praja Parishad or Mandal Praja Parishad shall undertake to make provision for, and improvement of, accommodation for schools with people's participation "

Hence, the scrutiny of Acts reveal the important role of Local authorities in regulating primary education in particular and school education in general in different states

Provisions Applied to Minority Schools

Article 29 and 30 of the Constitution of India guarantee the right of the minorities to conserve the language, script and culture and to establish and administer educational institutions of their choice. The National Policy on Education (1986) has also made a

special mention about backward minorities and states that greater attention will be paid to the education of these groups in the interest of equality and social justice which will include constitutional guarantee given to them to establish or administer their own educational institutions and protection to their languages and culture

In this context, the Delhi School Education Act (1973) states, "Unaided minority schools are exempted from the provision of scheme of management and they are not required to obtain prior approval of the authority concerned. The administration may make rules regulating the minimum qualification for and method of recruitment of employees of unaided minority schools (V 1). Therefore, no state legislature can make any legislative provision, which is not in accordance with policy as enunciated in Article 30 of the Indian constitution

Medium of Instruction at the Primary Stage

As enunciated in Delhi School Education Act 1973 (IV, 16 6) "teaching in a school at the pre-primary and primary shall as practicable be in one of the national languages listed in the Constitution of India and known to the child "

The language through which instruction is designed shall be the language declared in writing by the parents or guardian at the time of admission

The Director and other local authorities in Delhi shall, as far as practicable, provide adequate facilities for teaching through a national language at the pre-primary and primary stages of education desired by the parents of children belonging to any linguistic minority

This broadly corresponds to Education Acts of other states which have provisions of teaching through mother tongue at the primary stage except Arunachal Pradesh where English is the first language along with Hindi and Assamees

Ancillary Services

It is also note worthy that, the Karnataka Act (1983) also provides provision of ancillary services for recognized schools. The Act states, "The state government shall endeavour to provide for mid-day meals and other refreshments as may be deemed necessary for pupils in attendance at recognized educational institutions. The state

government may also make provisions, by rules, as to the manner in which and the persons by whom the expense of providing such meals or refreshment is to be defrayed as to the facilities to be afforded and the services to be rendered by the Governing Council with respect to the provision of such meals or refreshment and as to such other consequential matters ”

Kerala Education Act also states that it shall be the duty of the government to see that noon-day meals, clothing, books and writing materials are provided for poor pupils free of cost

Parents' Responsibility

As early as 1927, the Madras Elementary Education Act and others had fixed the responsibility of a guardian to send his or her child at school age to attend school

Obligation as guardian to send children to school is very clearly mentioned in Kerala Education Act and Andhra Pradesh Education Act It provides, 'In any of compulsion the guardian of every child shall, if such guardian ordinarily resides in such areas, cause such child to attend a government or private school and once a child has been so caused to attend school under this Act, the child shall be compelled to complete the full course of primary education or the child shall be compelled to attend school till it reaches the age of 14" (Kerala Education Act)

Further, Andhra Pradesh Education Act state in similar line that, it shall be the duty of guardian of every child to cause the child to attend an approved schools unless there is reasonable cause of non-attendance

The reason for non attendance, reasonable cause shall be given by the parents, (i) if or there is no approved schools within the prescribed distance (ii) child suffers from physical and mental defect which prevent him from attendance (iii) that there is any other compelling circumstances which prevents the child from attending the school, provided the same as certified by the attendance authority (A P Act)

Attendance Order

An “attendance order” is an order passed by the attendance authority directly to the parent to cause his child to attend a school. As stated in the Andhra Pradesh Education Act (1982) “whenever the attendance authority has reason to believe that the guardian of a child has failed to cause the child to attend an approved school and that there is no reasonable cause for the non-attendance of the child, it shall hold an inquiry ”

Attendance Authority can hold an enquiry for not providing reasonable cause for not attending the school. “If, as a result of the inquiry the attendance authority is satisfied that the child liable to attend an approved school under this Act and that there is no reasonable causes for his non attendance it shall pass an attendance order in the prescribed form directing the guardian to cause the child to attend the approved school with effect from the date specified in the order ”

In the similar direction the Madhya Pradesh Primary Education Act, (1961), provides “In exercise of the powers conferred by or under this Act, the attendance authority or any person appointed to assist the attendance authority may put such questions to any parent, or require any parent to furnish such information about his child, as it or he consider necessary, and every such parent shall be bound to answer such question or to furnish such information, as the case may be, to the best of his knowledge or belief.”

Hence, the provision of attendance order compels the parents to provide reasonable cause for non-attendance or to send the child to any approved school within reasonable distance

Penalty for employment of children or interference with their attendance at school

In this context Kerala Education Act clearly states, no person shall employ a child in a manner, which shall prevent the child from attending the school. There is also provision of penalty for employment of children or interference with their attendance of

school Under section 28 of Kerala Education Act “Any person other than the guardian who shall utilize the time or service of a child in connection with any employment, whether for remuneration or not in such a manner as to interfere with the attendance of the child at a Government or private school in spite of a warning given, shall be liable to fine not exceeding fifteen rupees for first offence and not exceeding thirty rupees for each subsequent offence”.

Teachers

The National Council for Teacher Education Act (1993) was passed by parliament for establishing NCTE as a statutory body Empowerment of NCTE as a statutory body is a significant step to achieve planned , coordinated development of teacher education and for regulation and proper maintenance of norms and standards in the teacher education system. However, it has very clearly laid down guidelines in respect of minimum qualifications for appointment of teachers at various levels of school education

Educational Acts of various states have also played significant role in establishing the minimum educational and professional qualifications for teachers A scrutiny of Education Acts of various states reveals that, generally a primary teacher in India requires minimum higher secondary education qualification with professional training of two years.

State Education Acts have made significant contribution towards regularizing the selection procedure of teachers in government, private and aided schools. As indicated in the Kerala Education Act, the State Public Service Commission makes the selection of teachers in government school of Kerala. The selections are made on the basis of tests and interviews and according to the performance of the candidates

Madhya Pradesh follows uniform rules for selection of teachers for different cadres in government and non-government school, except for the rules for constitution of selection committees for government and aided schools While, in Karnataka, the District Level Recruitment Committee, headed by the Chief Secretary of the concerned Zilla Parishad along with the Deputy Director of Public Instruction and District Social Welfare Officer as members, makes appointment of primary school teachers.

Bihar, like Kerala, makes appointment of primary teachers through the Bihar Public Service Commission

In Delhi, which has Delhi Education Code (1965) and Delhi School Education Act (1973), to govern its educational system, primary teachers are appointed by the Secretary of Education. While in Haryana the recruitment of teachers is made through the Subordinate Services Selection Board/Haryana Public Service Commission Private managements have their own recruitment procedure subject to government regulations

In Uttar Pradesh, the procedure for recruitment of teachers to Junior Basic School has been laid down by the U.P. Basic School Teachers Service Rules, 1981, which has been recently amended in 1998. The essential qualification for Assistant master and Assistant mistress of Junior Basic School (Class I-V) is graduation along with teacher training certificate. Selection in basic schools is made through a selection committee with the principal of DIET as its Chairman.

In Gujarat State also, recruitment of primary teachers is done at the Nagarpalika or District level.

The Government of Orissa has framed "Orissa Elementary Education/Method of Recruitment and Conditions of Services of Teacher and Officers Rules 1997. The essential qualification for Assistant Teacher in Level V is HSC pass and Certified Teachers (CT) course or B Ed No other candidate without this qualification can be recruited as primary school teacher.

A review of education codes of different states reveals variation in states with regard to their transfer policies. For instance in Bihar the newly selected teacher in primary schools is not posted in his/her home block and within a radius of 8 km from his or her home village.

In contrast, the Karnataka state makes the provision to post all primary school teachers in their home taluka as far as possible The transfer of a primary teacher outside his/her home taluka could be made by the Chief Secretary of the Zilla Parishad only in exceptional cases Madhya Pradesh also follows the Karnataka pattern, and, as far as possible, teachers are posted in their home district

Andaman and Nicobar does not have any hard and fast rule regarding the transfer of teachers. They are generally transferred on the basis of reports of the zonal and sub-zonal officers, and the willingness of teacher is given due importance. The island has adopted a flexible policy for posting and transfer of teachers, and, personal difficulties of teachers, scope of their children's education, availability of medical facilities etc are kept in mind before transferring any teacher.

In Mizoram, the teacher-pupil ratio is the major factor affecting transfer of teacher. Personal convenience and problems of teachers are also given due consideration.

Transfers of elementary school teachers in Tamil Nadu are effected by a Transfer Committee under the chairmanship of the Chief Educational Officer based on norms prescribed by Government.

Rajasthan state has formulated a comprehensive transfer policy in 1994, according to which, all newly selected teachers are compulsory posted in rural areas.

In the state of Uttar Pradesh, efforts are made to post primary and upper primary teachers of government schools in their own district, as far as possible.

Maintenance Function

Most of the School Education Acts are only regulatory or maintenance oriented in character (Singhal, 1990). The Acts are enforced relatively in the area of recognition of schools, grant-in-aid, admission etc. These Acts have neither played developmental role in enhancing the quality of school education nor achieving the target of universalization of elementary education.

3.7 Allied and Enabling Legislation

In addition to the Compulsory Education Acts passed by various states, there are some allied and enabling legislations, which have bearing on achieving compulsory and free education for all children within the age group 6-14.

Panchayati Raj and Decentralisation

Local self-government has very long history. Efforts were made to associate local bodies with compulsory primary education during pre and post-independence period. The Primary Education Acts passed by the provincial government during 1920's provided greater authority to the local bodies over compulsory primary education. During Pre-independence period, the British India provinces also transferred more and more responsibilities to the local bodies. Prior to 1951, there were Panchayat Acts only in four states i.e. the C P. and Berar Panchayats Act, 1946, the Uttar Pradesh Panchayat Raj Act, 1947, The Orissa Panchayat Act, 1948 and Madras Village Panchayat Act, 1950. But subsequently Rajasthan Panchayat Act, 1953, Andhra Pradesh (Telengana Area) Gram Panchayat Act 1958, Andhra Pradesh Panchayat and Zilla Parishad Act 1959, Bombay Village Panchayats Act, 1958, Punjab Gram Panchayat Act, 1952, Punjab Panchayat Samitis, Zilla Parishad Act 1961 etc. were passed in their respective states. In 1959, Rajasthan introduced democratic decentralisation under statutory local bodies (Panchayat Samitis) and transferred the control of primary education to them. The state of Andhra Pradesh also took similar initiative and transferred primary education to panchayat samitis. In 1961, Tamil Nadu also transferred power to panchayat samitis.

Further, a close link between decentralization, Panchayat Raj system and compulsory primary education was also very rightly reflected in the Four National Seminars on Compulsory Education (1961, 62, 63 and 64). The third Seminar had observed that, "In the field of primary education, the newly evolved panchayat is playing a very important role. This is but natural, for the awakening of the people, effective working of Primary democracy is ensured. In the rural areas, primary education is the responsibility of the Panchayat Samitis (1963, P.4)

Decentralization planning in management of elementary education is a goal also set by the National policy on Education (1986) and Programme of Action (1992).

The 73rd and 74th Constitutional amendments provide for decentralization of the activities and facilitate, transfer of power and participation of the local self-government

institutions or the 'Panchayati Raj Institutions' It has created a congenial ambiance of the PRIs to play a more dynamic and provocative role

These amendments make the establishment of 'Panchayati Raj' institutions mandatory on the states These Panchayati Raj bodies which are to have adequate representation of women, scheduled caste and scheduled tribes, minorities and representatives of parents, educationists will have the responsibility of development plans The functions entrusted to the Panchayati Raj institutions are "education including primary, secondary schools, teacher training and vocational education, adult and non-formal education"

The scope of the Panchayati Raj Acts provide an exceptionally 'enabling' framework for viable strategies and interventions. That could play a commanding role in promoting universal education and they have been delegated with responsibilities towards micro planning and school mapping The district level body will also implement, supervise and monitor all educational programmes, institutional planning, administration and financial control with respect to primary, middle, secondary and higher secondary schools Besides, it will draw upon the expertise of DIETs and other institutions for substantive curricular and pedagogical inputs into district level programmes of Elementary Education (EE), Non-formal Education (NFE) and Adult Education (AE)

The Panchayati Raj Acts envisages that formation of panchayat for a village and Village Education Committee (VEC), which would be responsible for the administration of education programmes at the village level The major responsibility of VEC would lie in operationalization of micro level planning, school mapping in the village through systematic house-to-house surveys and periodic discussion with parents Ensuring participation in primary education of every child in every family would be one of the main responsibilities of VECs VEC has the main responsibility for community mobilization, renovation and contribution of school building and improvement of pedagogical curriculum

During the eighth plan period several innovative efforts have been made under the on-going projects to establish decentralization (Example:DPEP, Lok Jumbish) This development has raised hopes for quicker and better implementation of Universal Elementary Education for every citizen through the active involvement of Panchayat and Village Education Committee As a sequel to 73rd and 74th constitutional amendment, many state have passed Panchayat Raj Act (Himachal Pradesh Act, 1995 and Rajasthan Panchayat Act, 1994) Andhra Pradesh Govt has also passed an Act providing for school management committees with community participation for over seeing the function of school

The Disabilities Act (1995)

UN convention of the Rights of the child (1989) states that disabled children have the right to achieve participation in the community and their education should lead to the fullest possible social integration and educational development (Article 23) Similarly Article 3 and 5 5 of the World Declaration (Jomtien, Thailand) stressed to provide equal access to education to every category of disabled persons The Salamanca statement and Framework for Action on Special Needs Education (1994) provided for education policies stipulating that disabled children should attend neighbourhood regular schools The national commitment to the universalization of primary education has stated that 'the disabled have the same rights as other citizen of a country' POA (1992) estimated 12.54 million children in the school going age with disabilities for which the provision had to be made Presently there are about 3000 special schools address persons with different disabilities Out of which 900 schools for hearing impaired, 400 schools for visually impaired, 1000 for mentally retarded, and 700 for physically disabled children (UNISED report, 1999) Nearly 55,000 disabled children are benefited by Integrated Education scheme through 17040 general schools located in 17 states/UTs (MHRD, 1999)

Many initiatives have taken to integrate disabled children to the normal schools through Integrated Education for Disabled Children (IEDC), Project Integrated Education for the Disabled (PIED), and District Primary Education Programme (DPEP)

Legislation enacted for children with special needs in India have provided a concrete direction towards UEE and EFA. Rehabilitation Council of India (RCI) Act 1992 passed in the Parliament to regulate the manpower development programmes in the field of education of children with special needs

The Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act was passed on December 22, 1995 in both Houses of the Parliament, notified on January 1, 1996 and enforced with effect from February 7, 1997. There are seven areas of concern of disability condition covered under this Act i.e. (i) Blindness, (ii) Low Vision (iii) Leprosy cured, (iv) Hearing Impairment, (v) Locomotor Disability (vi) Mental illness (Disability), (vii) Mental Retardation

Chapter V of the Act deals mainly with education. Appropriate Governments and local authorities to children with disabilities

26(a) access to free education in an appropriate environment till the age of 14 years

26(b) endeavour to promote the integration of students with disabilities

26(c) promote setting up of special schools in government and private schools for those in need of special education, in such a manner that children with disabilities living in any part of the country have access to schools.

26(d) endeavour to equip the special schools for children with disabilities with vocational training facilities

Further (V-27) states appropriate government and local authorities to make schemes and programmes for non-formal, part time classes for functional literacy, imparting education through open schools, open universities and providing every child with disability free of costs special books and equipments needed for his education

As has already been discussed under constitutional provisions, Act 29(2) guaranteed equal right for disabled and also Article 45 directs the state to provide free and compulsory education for all children including disabled

A number of enabling provisions have been initiated by way of legislation and policy initiative towards education of the disabled to achieve UEE and EFA

Child Labour Act

Nearly 40 percent of our population consists of children below 14 years India has the largest number of child laborers in the world and greater incidence of child labour than any of the countries outside South Asia According to the government of India the number of working children estimated about 12 million in the National Sample Survey and the other sources estimated 44 million working children in India (Jagannathan, 1999) Most of the 90 million children not in school are working children

In our Constitution, Article 23 and 29 (i.e Rights against Exploitation) which are under heading 'Fundamental Rights' and Article 39 clause (e) and (f) and Article 45 which are under the heading "Directive Principle of State Policy" are related to elimination of child Labour, protection of childhood and access to free, compulsory and universal primary education According to clause (i) of Article 23, traffic in human beings and beggars and other similar forms of forced labour are prohibited and any violation of this provision shall be an offence punishable in accordance with law Article 24 states that a child below the age of fourteen shall not be employed to work in any mine or engaged in hazardous employment Clause (e) of Article 39 provides that the health and strength of workers, men and women and the tender age of children are not abused and the citizens are not forced by economic necessity to enter vocations unsuited to their strengths Similarly, clause (f) 42nd Amendment of the same Article states that the state shall, in particular, directs its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom

and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment

Apart from these Constitutional rights/provisions, our states have passed a number of Acts such as 1) The children (Pledging of Labour) Act, 1933, (2) the Employment of Children Act, 1938, (3) the Minimum Wages Act, 1948, (4) the Factories Act, 1948, (5) the Plantation Labour Act, 1951, (6) the Mines Act, 1951, (7) the Merchant Shipping Act, 1958, (8) the Motor Transport Act, 1961, (9) the Apprentice Act, 1961, (10) the Atomic Energy Act 1961, (11) the Beedi and Cigar Workers (Condition of Employment Act 1960, (12) the Shops and Establishment Act in various States and Union Territories and (13) the Child Labour (Prohibition and Regulation Act 1986

The Child Labour (Prohibition and Regulation) Act, 1986 suggests the measures to promote employment oriented development schemes both in rural and urban areas and the all-round development and extension of adequate facilities for both formal and non-formal education, vocational education and training and in the coverage and extension of social security and family welfare measures should all go a long way to tackle the basic and root causes of child labour (NPCL, 1981 3)

General development programmes for the benefit of child labour focus mainly on (a) education, (b) health, (c) nutrition and (d) coverage of anti-poverty programmes National Policy on Education (1986) special emphasis has been placed on covering of working children and minimization of dropout rates Non-formal education centers are expected to play an important role in enrolling and retaining working children There is provision for micro planning for non-formal education in centers for child labour Especially in urban slums, there is provision for non-formal programmes by the state government and voluntary agencies Also, efforts have been initiated to link non-formal education with the open schools and with the formal education system to enable working children to continue their education

The Child Labour Prohibition and Regulation Act of 1986 emphasis regulation rather than prohibition of child labour legislation bans the employment of children in factories and restricts employment of children in so called hazardous work, but children are otherwise permitted to enter the labour force – at any age “Poor families need the income of children, what ever the law says, better schools and faster economic development will help reduce child labour.” India has signed the UN Convention on the Rights of the child, which contains provision (Article 32 and 36) calling for the banning of child labour and (Article 78A) calling for establishment of universal compulsory primary education. Several non-formal centers are now being opened in the different parts of the country both by the government and non-governmental initiatives to enable working children to receive elementary education

Total prohibition of child labour and provision of free, compulsory and universal primary education shall go hand in hand. Child labour cannot be totally eliminated without providing and sustaining avenues for free, compulsory and universal primary education. Similarly, free and compulsory universal primary education will not be meaningful while children continue to be at work place, whether hazardous or not.

The foregoing discussion has thrown some light on compulsory legislation during post independence period reflecting on both sides of the scenario i.e. development of compulsory laws and enforcement of laws to bring children 6-14 age group under the portal of elementary education. The constitutional priorities and changing post independence educational scenario gradually brought metamorphosis of educational legislation.

The major milestones of compulsory legislation during post independence period has traversed through different phases. Early efforts were made to extend compulsory laws to almost all parts of the country. The second mile stone of post independence period was to modernize the legislation on compulsory education by ‘renovating’ and replacing compulsory acts. It also marked substantial shift from policy of compulsion to policy of persuasion to achieve the target of constitutional commitment. The country

also witnessed operationalization of compulsory laws by all major states till the middle of 1960's. Recommendation of Education Commission and policy pronouncement, further provided impetus to state governments for enacting legislation during 1960's, 1970's and 1980's to make elementary education free and compulsory.

Another major mile stone was substantial shift from penal provision of compulsory education laws to socio economic measures and providing ameliorative measure as an effective method of bringing children to schools and retaining them longer time. Hence, the education Acts passed by different states after National Policy of Education (1986) have made special emphasis on developmental aspects.

Besides compulsory acts, there are other enabling legislative acts such as child labour act, disability act, child marriage act which have substantial bearing on education of children and also achieving the target of universalisation of elementary education.

The enforcement of acts and their practice, however, have not yielded desirable result. The enforcement of these acts were ineffective resulting in hardship to parents, particularly from poor and disadvantaged sections rather than furthering in the objective of the legislation. The socio-economic constraints of states and parents, socio – psychological constraints of authorities largely responsible for ineffective enforcement of these legislation.

Effective implementation of legislation on compulsory education calls for adequate infrastructure, availability and mobilization of necessary resources, suitable incentive schemes, efficient administrative machinery, abolition of child labour, and stringent provisions of penalty for non-compliance of government directions etc. Active participation of people and other stakeholders is also essential for achieving the goal of free and compulsory education for all. The Indian Constitution has expressed its commitment to provide free and compulsory education through its Article 45, which directs the state to fulfill the target of universalization of elementary education within ten years. It is obvious from the Article 45 that the duty of the state does not end with enrolling 100 % children of school going age, but, also it becomes necessary for it to retain all the children in school who are enrolled. Universal retention up to 14 years is possible only if the state is capable of sustaining their interest through quality education. Therefore, universal access, universal enrolment, and universal retention have been emphasized since the adoption of Constitution in 1950.

Keeping in view the educational facilities available in the country at the time of independence, the earlier efforts gave priority to the provision of schooling facilities over other components of Universalization of Elementary Education (UEE), such as, enrolment and retention. The attention now has shifted towards quality of education along with access, enrolment and retention. Therefore, the Ninth Five Year Plan envisaged UEE to mean Universalization of access, enrolment, retention and achievement.

Since 1950 impressive progress has been made in every sphere of elementary education. The country has made unprecedented increase in the number of primary schools. As against 210 thousand primary schools and 14 thousand upper primary schools in the country in 1950-51, there were 611

thousand primary, and 186 thousand upper primary schools in the country in the year 1997-98, thus, showing an average annual growth rate of 2.3 and 5.66 percent respectively. A large number (83 percent) of a total of 1061 thousand habitations of the country have access to primary schooling facility within a distance of 1 km, and 76 percent habitations to upper primary schooling facilities within a distance of 3 km. About 94 and 85 percent of the total rural population is accessed to primary and upper primary schools. The ratio of primary to upper primary schools over time has improved, which is 3.5 at present. Enrolment at the primary stage has increased more than six folds, from 191.54 lakhs in 1950-51 to 1109.85 lakhs in 1998 at primary stage, while the enrolment at the upper primary stage increased by almost eleven times from 43.60 lakhs in 1950-51 to 92.14 lakhs in 1998-99. The Gross Enrolment Ratio (GER) of children increased from 42.60 percent in 1950-51, 98.5 percent in 1998-99, and from 12.70 percent in 1950-51 to 58.5 percent in 1998-99 for the primary and upper primary stage respectively. Drop out rate has decreased considerably over the years, and the transition rate from primary to upper primary stage was 74.5 percent in 1997-98 registering a significant improvement over 16.28 percent in 1950-51.

Majority of states, in the country, have enacted legislation on compulsory education reaffirming their faith in the Constitutional commitment. At present such legislation exist in 16 states and three Union Territories, namely Andhra Pradesh, Assam, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal, Andaman and Nicobar Islands, Chandigarh and Delhi. The Himachal Pradesh Act covers entire elementary stage (Classes I-VIII), while in remaining states, Compulsory Education Acts cover only primary stages (Classes I-V). The union territories of Daman and Diu, and Pondicherry, have their own legislatures and also exercise powers specified in the Government of Union Territories Act 1963 since education in UTs constitute a special responsibility of Central Government. As the compulsory primary

CHAPTER-IV

Enforcement Of Legislation: Supportive Measures

education has been a major thrust area of the country, it is given a significant place in policy initiatives, and five years plans of the country

In order to augment the implementation of legislative provisions, the country has developed a strong network supportive services. These include announcement of National Policy on Education from time to time; toning up of administrative machinery, and financial allocation of resources to achieve the goal of free and compulsory education promised in the Constitution, and various state legislation. Besides, realizing the significance of the role of teacher in the context of child's education a number of legislation have ensured that teachers enjoy service conditions at par with other government employees of similar stature. An effort has been made in this section to discuss these measures and schemes which have ensured easy and effective implementation of legislation and contributed in quantitative and qualitative development of elementary education

4.1 National policies on Education and Major Policy Initiatives

The first National Policy on Education (NPE, 1968) announced during post independence era, gave unqualified support to free and compulsory education for all children up to the age of 14 years, and expressed the need for equalization of educational opportunity in rural and backward areas. The National Policy on Education (1986), and its POA (1992) gave priority to UEE and introduced many innovations, for instance, the emphasis was shifted from enrolment per se to enrolment as well as retention. The NPE (1986) sought to adopt an array of meticulously formulated strategies based on micro planning to ensure children's retention at school. It recognized, that, unattractive school environment, unsatisfactory condition of buildings, and insufficiency of instructional material function as demotivating factors for children and their parents. The policy, therefore, called for a drive for a substantial improvement of primary schools and provision of support services. To this end, the scheme of Operation Blackboard was conceived. The NPE commended the adoption of a child-centred and activity

based process of learning at the primary stage. It sought to address the most difficult aspect of access, viz, access to education of millions of girls and working children. A larger and systematic programme of Non-Formal Education (NFE) was introduced as an integral component of the strategy to achieve UEE. The NFE also provided for laying down of Minimum Levels of Learning (MLL), which have been identified for the primary stage in terms of competencies to be achieved by each and every child at the end of primary stage. A number of schemes initiated in recent past with the objective to universalize elementary education in the country, have yielded encouraging results. Some of these are as follows

4.1. I Operation Blackboard

This scheme was launched in 1987-88, with the aim of improving the human and physical resources available in the primary schools of the country. The scheme envisages providing an additional teacher to single teacher primary schools, at least two class rooms in each primary school, and providing teaching-learning equipment to all primary schools under OB scheme. Under this scheme, teaching-learning equipments have been provided to 5.23 lakh primary schools, 1.49 lakh additional teachers have been sanctioned and 1.82 lakh classrooms have been constructed in the country by 1997-98. Besides, 34,892 posts for a third teacher were sanctioned in primary schools with enrolment exceeding 100 by the end of eighth plan period.

4.1.II Minimum Levels of Learning

India is one of the few developing countries which took initiative to lay down Minimum Levels of Learning (MLL), to be achieved at the primary stage. The state governments have introduced MLL in most of their primary schools including local bodies/private schools. DPEP has adopted MLL as a major strategy for improvement in quality of primary education.

4.1.III Incentive schemes for Disadvantaged Groups

Several strategies have been adopted to bring girls into the folds of education since independence. In the first three Five Year plans, special attention was paid to girls education with earmarked allocations. Many incentive schemes are being implemented for them. Education is free for girls up to higher secondary stage in most of the states. There are incentive schemes, like, free noon-meal, free books, free uniforms, and attendance scholarships for girls and children belonging to various disadvantaged groups. In several states special stipends are awarded to these children as day scholars, and for board and lodging from upper primary education onwards. In Madhya Pradesh, for instance, the tribal girl passing class V is provided a 'bicycle' for commuting to school if she joins class VI, and allowed to retain the cycle, if she clears class VIII. Maharashtra and Andhra Pradesh have many incentive schemes to promote universal elementary education among the disadvantaged sections of the society. Post Matric Scholarships are also provided to SC and ST students in these states. The Mid-day meal scheme was tested time and again as an incentive to improve the attendance of children in school since its first implementation in the province of Mysore in 1925, and in many other states during post independence period. However, in 1995 the Mid-Day Meal Scheme, under the Scheme entitled Nutritional Support to Primary Education was launched. The programme is designed to give a boost to the universalization of compulsory education by impacting upon enrolment, attendance, retention and the nutritional needs of children in the primary classes. The scheme has so far (1999-2000) covered 9.90 crore children, and the evaluation of the scheme indicates, that, it has helped in increasing enrolment in Assam, Madhya Pradesh, Uttar Pradesh, and West Bengal, and has shown a positive impact on attendance and retention of children in Gujarat, Haryana, Jammu & Kashmir, Karnataka, Orissa and Rajasthan. Bihar has recently launched an Attendance Scholarship Scheme for children from families below the poverty line. All these efforts reflect the recent interest, across

educationally backward states, to provide quality elementary education to children upto 14 years of age

As a result of the 'protective discrimination' policies under Constitutional provisions, the enrolment of the SC/ST children has considerably improved, though, as compared to non scheduled groups their drop out rate remains high both at the primary and the middle stages, i.e. classes I –VIII

4.1.IV District Primary Education Programme (DPEP)

The national commitment for the universalization of elementary education and renewed thrust on Education For All after the Jomtien Conference in 1990 resulted in launching of District Primary Education Programme as a Centrally Sponsored Scheme (CSS) of the Government of India, with central government bearing 85 per cent cost of the project. The Government of India share is resourced by external funding from various international donors, like, World Bank, and the International Development Agency (IDA). The programme mainly aims at providing access to primary education for all children, reducing primary drop out rates to less than 10 per cent, increasing learning achievement of primary school students by at least 25 per cent, and reducing gap among gender and social groups to less than five per cent.

The programme is being implemented in educationally backward districts, having female literacy below the national average, and districts where Total Literacy Campaigns (TLCs) have been successful leading to enhanced demand for elementary education. The programme, which was initially launched in 1994 in 42 districts of seven states, has now been extended to cover 240 districts of 16 states viz Assam, Haryana, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Tamil Nadu, Andhra Pradesh, Bihar, Gujarat, Himachal Pradesh, Orissa, Rajasthan, Uttar Pradesh and West Bengal.

Evaluation of the programme indicates that it has helped in access and retention of children. There has been a spurt in enrolment, and increase in learning achievement. Increasing community involvement, improvement in classroom processes and concerted effort focus have emerged as the key success indicators of the programme.

4.5 Non Formal Education Programme

In pursuance of the Article 45 of the Constitution, the NPE 1986 envisaged a systematic programme of non-formal education as an integral component of the strategy to achieve Universalization of Elementary Education. However, the scheme has been in operation in the country since 1979-80 and focuses on out of school children in the age group 6-14 years. It covers, primarily, the educationally backward states of Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Jammu & Kashmir, Madhya Pradesh, Orissa, Rajasthan, Uttar Pradesh and West Bengal. It also covers urban slums, hilly, desert and tribal areas and areas where there are large number of working children. Special emphasis is given on enrolment of girls, working children and SC & ST children who are unable to attend regular schools due to varying socio-economic reasons. A review of availability of NFE centres in the country reveals, by the year 1999-2000 there were 297 NFE Centres in the country, covering about 74.20 lakh children in 24 states, and Union Territories. Besides, 58788 NFE Centres are run by 816 voluntary organizations at a total of Rs. 36.05 crore to State and Union Territories, and Rs. 11.91 crore to voluntary organizations has been released under the scheme by 1999.

A number of non-formal education and other schemes have been launched by the States to provide compulsory education to all children in the relevant age group. In Rajasthan, for instance, 'Shiksha Karmi' project has helped in overcoming the problem of teacher absenteeism, which was the cause of high rate of drop out among rural children. The scheme of 'Prahar Pathshala' provides condensed formal school curriculum to out-of-school children. Presently girls form more than 70 percent of the total learners of these centres, who are benefiting from these Prahar Pathshalas. 'Lok Jumbish' Project has done significant task in school mapping and community involvement in education of children. It has initiated an innovative and successful NFE programme called 'Sahaj

Shiksha' for girls and boys of disadvantaged sections of society. There are more than 3000 Sahaj Shiksha centers in Rajasthan catering to the needs of dropouts and out of school children, especially girls. Bihar Education Project (BEP), assisted by UNICEF has also done considerable work to promote the universalization of primary education through the formal schools, the NFE centres, and the very innovative 'Jagjagi Centres' for out of school girls. The 'Education Guarantee Scheme' (EGS) was implemented by the Government of Madhya Pradesh in 1997. Under this scheme the government guarantees the provision of educational facilities, to children in habitations where there is no schooling facility in the radius of one kilometer, within a period of 90 days of receiving a demand for such a facility by the local community. The scheme is managed on the principles of decentralization and community participation. Encouraged by the success and response of the community to Education Guarantee Scheme (EGS), the Government of India has revised NFE to include EGS and alternative school strategies. The new scheme is named as NFE & AIE (Alternative & Innovative Education). Many states have evolved similar alternatives for providing educational facilities to out of school working children and children with special needs.

In Andhra Pradesh the 'Mabadi' project meaning 'our school' was started in 1990. The project is run by the local community with support from the Integrated Tribal Development Authority (ITDA). Mabadi is a full time school and has classes upto second standard. After completion of the course at the mabadi, the teachers encourage parents to admit their children to the nearby Ashram or residential schools.

These initiatives have shown impressive achievements. All these schemes/initiatives have focused on responding to the needs and circumstances of learners and many have inbuilt flexibility to adjust to the local context and environment of the child, rather than, forcing the child to adjust with any standard norm. The involvement and ownership of the local community has been central to most of these initiatives. It is also evident from these initiatives that forging a link and partnership between government, NGOs, and other organizations may yield greater and better results in the context of free and compulsory education for all.

4.1 VI Sarva Shiksha Abhiyan

During the last five decades of independence, in spite of legislation, policy pronouncements and fixing fresh dead lines, the goal of free and compulsory education remained unfulfilled and studies conducted in this area show that achievement of UEE in near future still remains a cherished dream

It is now being felt, that, instead of segregated approach adopted by various states through different scheme of UEE, a more holistic and convergent approach is needed and effort should be made to universalize elementary education in a mission mode. The newly formulated scheme named as 'Sarva Shiksha Abhiyan (SSA)' provides for effective de-centralized planning, and community ownership of initiatives in the elementary education sector. SSA has fixed the target of achieving UEE by 2010. This achievement of goal is expected to fulfill all the four components i.e. universal access, universal enrolment, universal retention, and universal achievement. The EFA 2000 World Conference, held in Dakar in April 2000, also reinforced this approach to UEE. The SSA scheme is proposed to be launched to ensure that every child in the relevant age group (6-14 years) is either in a school, Education Guarantee Centre, or a 'Back to School' camp by 2003. It has also been decided to ensure five years of schooling for every child in India by 2007, and eight years of elementary education by 2010. Community ownership and effective monitoring by the elected Panchayat Raj institutions and urban local body representatives is being attempted in the Sarva Shiksha Abhiyan. The education of girls has been a priority area and 148 districts with low female literacy among the SC/ST are being targeted as a priority under the Sarva Shiksha Abhiyan.

Strategy Frame for Sarva Shiksha Abhiyan

In order to achieve Universalisation of Elementary Education, in a holistic and convergent approach, the following key strategies have been worked out in consultation with States and Union Territories .

- i) Emphasis to be laid on retention and achievement rather than on mere enrolment,
- ii) Adoption of incremental approach for creating school facilities 'Education guarantee Centres' in unserved habitations and "Back to school camps" for out of school children in the 10-14 age group
- iii) Focus to be shifted from educationally backward states to educationally backward districts,
- iv) Adoption of desegregated approach with a focus on preparation of district specific and population specific plans,
- v) Universal access to schooling facilities particularly to girls, desegregated groups and out of school children;
- vi) Promotion of life skills, through relevant curriculum,
- vii) Improvement in school effectiveness, teacher competence, training and motivation,
- viii) Decentralization of planning and management through Panchayati Raj Institutions (PRIs)/ Village Education Committees (VEC) and stress on participative processes,
- ix) Convergence of different schemes of elementary education and related services such as early childhood care and education, school health and nutrition programmes, etc

4.2 Administrative Set up

Effective implementation of legislative provision demands strong and efficient administrative setup to take various policy initiatives in the field. During the post independence period a comprehensive structure of administration of primary education has been established in the country. The overall administration of education in the state is the responsibility of State Education Secretary or Education Commissioner belonging to Indian Administrative Service, whereas the control of schools is generally vested in the Director of Public Instructions (Schools). Several states have separate Directors of elementary and secondary education. The Director of Public Instruction is assisted by a number of Joint, Deputy and Assistant Directors of Education, depending upon the size of the state. At the district level the District Education Officer, assisted by Block

Education Officer or Block Extension Education Officer, is responsible for the administration of schools. The NPE (1986) recommended setting up of State Advisory Boards of Education and District Boards of Education at the state and district levels respectively, which was established subsequently in many states, such as State Education Advisory Board in Kerala (vide Kerala Education Act 1958 as amended in 1960, 1969 and 1985) and Madhya Pradesh etc. for the purpose of advising the government on matters pertaining to educational policy and administration of Department of Education.

The primary schools throughout the country remain under the administrative control of three agencies namely (1) Government – Central or State, (2) Local Boards including District Boards, Municipal Boards, Territorial Councils, Cantonment Boards, Notified Area Committee, Panchayat Samitis and Zilla Parishad etc., (3) Private Organizations - aided or unaided. Various state acts have clearly specified the administrative machinery for ensuring effective implementation of legislation. The Bombay Primary Education Act (1947), for instance, recommended the constitution of a District School Board for each district, while under each municipality there is a provision of a Municipal School Board. According to the Section 20(1) of this act, every district school board, with the approval of the state government, and every authorized municipality shall maintain an adequate staff of Assistant Administrative Officers, Supervisors, Attendance Officers, Clerks, Primary School teachers, and other staff for the administrative management and control of approved schools within its areas. The West Bengal Primary Education Act, 1973 makes the provision of West Bengal Board of Primary Education. Besides, it has District Primary School Councils in each district consisting of the District Inspector of School in charge of Primary education, District Special Officer, Scheduled Caste and District Tribal Welfare Officer etc. Uttar Pradesh has the provision of Zilla Basic Education Committee according to U.P. Panchayat Raj Act 1947 to manage and establish new Basic schools in rural areas and help in development, extension, and improvement of Basic schools. The Andhra Pradesh School Education (Community Participation) Act 1998 makes the provision for constitution of a Panchayat Education Committee in every Gram Panchayat to undertake appropriate and suitable measures to encourage parents to send their children to schools, institute

incentives, and disincentives, dissuade people from engaging children in child labour, determine the school calendar and school timings, help augment infrastructure facilities etc. The Act also provides for the establishment of Mandal Education Committee, and Municipal Education Committee to monitor the functioning of schools, and take such corrective steps as may be necessary. Rajasthan (1959) introduced democratic decentralization under statutory local bodies (Panchayat Samitis) and transferred the control of Primary education to them. Tamilnadu and Maharashtra have also adopted similar decentralized pattern of the administration of primary education.

These committees /boards/ councils are expected to perform diverse activities to ensure proper implementation of legislations in their respective areas. For instance, according to the West Bengal Primary Education Act 1973 (Section 79), every Primary School Council is expected to prepare a scheme for the entire area within its jurisdiction to provide compulsory primary education to all children. The scheme should include, appropriate number of children in such areas classified according to age, sex, and mother tongue, list of existing number of primary schools classified according to the language in which instruction is given in such schools, the location of schools, number of teachers and students in each of such schools, list of number of new primary schools proposed to be opened- classified according to the language in which instruction is proposed to be given, location of proposed schools, number of teachers and other staff that would be required and the accommodation that would be available in such schools.

Consequent upon the recommendation of NPE (1986) for decentralization and greater participation of community in planning, administration, financing, monitoring and supervision of education and following the Constitutional amendment in favour of Panchayat Raj Institutions, School Complexes, Village Education Committees, and School Development Committees have been set up in a number of states involving greater participation of local community. Efforts are also being made to mobilise physical, and financial resources from the village communities to finance compulsory education. For instance, the School Reform Act in Andhra Pradesh provides for establishment of committees for people participation at various levels – School

tee, Panchayat Education Committee, Model Education Committee, Municipal Education Committee and District Education Committee etc. Monitoring of education is by District Education Board and State Advisory Board for School Education. These committees are constituted with adequate representatives of parents, community leaders and teachers. These committees are vested with several powers, including, resource allocation. This significant effort in the direction of decentralization may be followed by other states also to help the community and parents share greater ownership of their children's education and efficient functioning of schools ensuring qualitative improvement of elementary education.

Financing of Compulsory Education

The provision of universal, free, and compulsory elementary education is one of the earliest promises to be kept. At the national level, the share of education in Gross National Product (GNP) is the most standard indicator of national efforts on the development of education. It reflects the relative priority being accorded to education in the national economy. A review of various Five Year Plans, since independence, states that education has been accorded an important place in the Five Year Plans of the country. On the recommendation of the Education Commission (1966), the Government of India (1968) quantitatively fixed a target of investing six percent of the national income on education by 1986. This goal, however, eludes us so far, and the ninth Year Plan (1997-2002) has readjusted the year for achieving this target by 2002, the end of Ninth Plan.

An analysis of financial allocation on education in various Five-Year Plans reveals that, at present 3.6 percent of GNP is invested on education compared to 1.2 percent in 1950-51, which is a significant increase. Expenditure on education in the five-year plans has shown a constant increase since the inception of the First Five-Year Plan in the country. The outlays for education multiplied by more than 50 times, since the first year plan. The five decades of independence have witnessed successive increase in share of education to the GNP of the country. In the decade 1950-51 to 1959-60, 1.8 percent of the GNP was allocated to education, which increased to 2.8%, 3.1%, 3.2% and 4% for the decades 1960s, 1970s, 1980s and 1990s respectively.

India inherited a top-heavy system of education at the dawn of independence with more consideration for expansion of secondary and university education as compared to elementary education. Kher Committee, emphasizing on elementary education suggested allocation of 50 percent of the total fund on elementary education. In practice, however, the expansion in secondary and university education continued to be much higher than in elementary education. Moreover, the expansion in sectors like medical education, technical education and agricultural education etc. was almost phenomenal. Consequently, the proportion of inter-sectoral allocation of financial resources, during various plan periods, reflects a lopsided emphasis on elementary education. An analysis of inter-sectoral allocation of resources reveals, that, highest priority was accorded to elementary education vis-à-vis other sectors of education in the first Five Year Plan, in which, 56 percent of the total plan resources were allocated to elementary education. In the second Five Year Plan, the decision to industrialize the economy was taken and consequently, technical and agricultural education was given a higher priority. Allocation on elementary education, therefore, declined to 35 percent in the second plan. It reported further decline to 34 percent in the third plan, and gradually to 30 percent in the sixth plan.

The fifth plan, however, included elementary education in the National Programme of Minimum Needs and proposed full-time primary school facilities for 97 percent of the children in the age group of 6-11, and 40 percent in the age group of 11-14 years, sixth plan also accorded highest priority to elementary education compared to other sectors of education, though the plan allocation reduced to only 30 percent, compared to 35 percent in the fifth plan. The seventh plan emphasized policies and programmes which aimed at realization of universalization of elementary education for children in the age group 6-14 years by 1990. Consequently, elementary education was given a boost, and drastic cuts were made in plan allocation for secondary and higher education. During seventh plan period allocation on education was increased up to 34 percent. The development of education during this period was marked by the announcement of National Policy on Education (1986), its Programme of Action (POA), and launching of Operation Black Board Scheme (1987). The major thrust area of the

Eighth Plan was universalization of elementary education and complete eradication of illiteracy. Therefore, elementary education sector was given top priority over other sectors of education with resource allocation sharing 42 percent of the total plan outlay. The period is marked by launching of District Primary Education Programme (DPEP, 1994), and Nutrition Support to Primary Education (1995). The Ninth Plan continued to lay same emphasis on elementary education and the schemes which had been initiated in the seventh and eighth plan continue to get same priority. The Ninth Plan visualizes to universalize education by 2010 through newly formulated strategy of Sarva Shiksha Abhiyan (SSA).

State policies closely follow the national policies, therefore, all the five year and annual plans of states have minimum needs component which includes adult literacy and elementary education. The release of central assistance to the state plan is linked with this performance in the minimum needs component.

It is obvious from the above description that high priority was accorded to compulsory education in the decade which followed independence, however, due to emphasis on industrial sector the focus later on shifted towards agricultural and technical education. But as a result of NPE (1968) and NPE (1986), which laid emphasis on elementary education, the allocation for elementary education was stepped up significantly during seventh plan onwards. In spite of all these efforts, the universalization of elementary education has been becoming an increasingly difficult task causing postponement of the target year time and again. The fluctuating trend in relative emphases on elementary education, in various five year plans is one amongst many other factors impeding the UEE. As observed by Tilak and Varghese (1990), had the pattern of inter-sectoral allocation of resources in education sector adopted in the first Five Year Plan continued, universalization of elementary education would have been an easy task, if not already accomplished by now.

Besides, the World conference on 'Education for All' held in Jomtien, Thailand in 1990 unfolded the possibility of international assistance for primary education without any compromise with the national autonomy in policy and programme formulation and implementation. Consequently, a number of pilot projects like DPEP, Lok Jumbish, and

Shiksha Karmi etc are being implemented in the country with the assistance of international donors like World Bank, Swedish International Development Authority (SIDA), and Overseas Development Administration (ODA) of UK etc Besides a number of projects like Mahila Samakhyas Child Centered Learning, Andhra Pradesh Primary Education Project (APPEP), and Bihar Education Project (BEP) etc were already being undertaken prior to 1990 with the financial assistance from international donors All these initiatives helped augmenting the process of achieving the target of free and compulsory elementary education cherished by the Constitution and supported by Compulsory Education Acts

4.4 Service Conditions of Teachers

Besides a sound policy on education, efficient administrative machinery and strong financial support to meet the cost of compulsory education, the teacher is the single most powerful factor influencing the quality of education. It has been widely accepted by now, that, teachers have a right to satisfactory conditions of service, salary and emolument, age of retirement and pension benefits etc

The enactment of Education Acts in various states have helped in improving the service conditions of teachers and provided protection to them from exploitation in the hands of management These Acts have laid down detailed guidelines for qualification, procedure of recruitment, service conditions and facilities to teachers, their transfer and grievance redressal policy etc which have helped in improving the service conditions of teachers, especially in private schools Besides various rules and regulations passed by various state governments, from time to time, contributed to a great extent in making teaching a more attractive and respectable choice

Regularization of Service

In a recent far-reaching judgment in *Akhter Hamid Sheikh vs. District Inspector of Schools (Secondary Education) Nadia and others*, the Calcutta High Court (1991) ordered regularization of service of the petitioner serving as an Assistant teacher for a decade. The petitioner was denied regularization only because the post was reserved for Scheduled Caste candidate. The court observed that the petitioner has been discharging his duties as Assistant teacher and this period is too long and in those circumstances, the court may invoke the fundamentals of economic justice. Article 39 and its sub-articles constitute a complete code of economic justice. Article 39 which is engrafted in the Directive Principle under part IV of the Constitution is to be read in the context of the decision of the *Supreme Court* right from *Randhir Singh's case* reported in AIR 1982 SC 879, and also the decision of the Supreme Court in the case of *Ram Chandra Iyer vs. Union of India*, reported in AIR 1984 SC 541. Economic justice is a part of the preamble of the Constitution, and the preamble, Part III and IV are to be read together so as to achieve harmonious construction of the Constitutional schemes and provisions. The Court cannot otherwise ignore the hard reality that a person serving in any institution for about a decade should not be fastened with the procedural tangles. It is a fit case where the West Bengal Madarsa Education Board should treat the petitioner as an Assistant Teacher by passing necessary orders. The Court further held that the post reserved for Scheduled Caste candidate is to be examined in the light of the essentials of protective discrimination, which ensures equality. Such appointment to the post reserved for scheduled caste candidate in a given situation can be lawfully regularized so as to accommodate a teacher serving in an institution for about a decade.

Source : Shah A.K.(1992): Education and Educational Institutions Cases, vol. V Allahabad.

The Punjab Privately Managed Recognized Aided Schools (Security of Services Act, 1969, amended in 1979 & 1981) Act, for instance, recommends that all teachers working in government aided privately managed schools are assured of security of service. It includes the provision for payment of 75 percent of the deficit of the expenditure on salaries of the staff by the state government, to schools. The procedure for disciplinary action against the employees, specific powers and functions of departmental officers and management of aided schools has also been laid down in this code.

Vacation Salary to Teacher

In the case of *Shamsuddin, J vs State of Kerala*, the Kerala High Court (1992) interpreted the Rule 49 under Chapter XIV A of Kerala Education Rules, 1959 as it means, that, a person is entitled to retention in service either by reason of appointment in permanent vacancy or by reason of continuous service of eight months with continuity in service extending over the summer vacation. Rule 49 reads as follows, "Qualified teachers except, Head masters appointed in vacancies which are not permanent, which extend over the summer vacation and who continue in such vacancies till the closing date, shall be retained in the vacancies during the vacation, if their continuous service, as on the closing days, is not less than eight months. The teachers so retained shall be entitled to the vacation salary. These teachers shall be relieved on the closing day if their continuous service as on that day is less than the aforesaid period. This rule shall not apply to teachers appointed in training vacancies."

Explanation – for the purpose of this rule, 'Headmaster' includes 'Teacher-in-charge' also.

The court ruled that the petitioner is entitled to vacation salary for the period 1984-85.

Source: Shah A.K (1992): *Education and Educational Institutions Cares*, Vol. V. Allahabad.

The Madhya Pradesh Local Authorities School Teachers (Absorption in Government Service) Act 1963, paved the way for absorption of certain teachers in schools run by local authorities in government service. Under this Act, a screening committee for each district, under the District Education Officer as its Secretary, has to be constituted. The screening committee is empowered to prepare a list of existing teachers on the basis of their qualifications and experience, who are considered suitable for absorption in government service. The service records of teachers are made available to the screening committee by the local authorities. The service conditions of absorbed teachers, including salary, scale of pay and leave rules etc are same as prescribed by the state government, and due to the teacher, as a result of absorption, are paid by the local authority. The Madhya Pradesh Education Code 1973, which consists three parts, Rules and Regulation, appendices, and forms, prescribes rules relating to teachers' training and selection, their service conditions, salary scales, transfers, civil service conduct rules, and rules relating to retirement.

According to the Sikkim Education Bill (1977), a teacher can be appointed on a regular or contract basis, though the initial appointment for every teacher is to be under contract for an agreed period. The government has been empowered, through this bill, to lay down the conditions for services of teachers and other staff employed in educational institutions, which all the educational institutions are bound to follow. The bill further maintains, that, no employee can be discharged or dismissed for misconduct without holding an inquiry, and no teacher can be suspended without prior permission of District Education Officer (DEO). An appeal can be made by the dismissed, discharged or terminated employee to the Director of Education against the order within thirty days.

The Haryana Aided Schools (Security of Service) Act, 1971, empowers the state government to prepare a uniform code governing the service conditions of employees of these schools, prescribe qualifications for their appointment, and ensure uniform scales of salary. The Haryana Aided Schools (Security of Service) Rules, 1974, has laid down comprehensive rules regarding the service conditions of teachers in aided schools. The employees of aided schools in the state enjoy the same scale of pay and DA as are admissible to the government employees from time to time. The rules provide for a contributory provident fund and no employee can engage except with the previous permission of the management, directly or indirectly in any trade or business or undertake any other reemployment.

Various states have adopted suitable measures for **grievance redressal** of teachers. Kerala Education Act and Rules, for instance, lays down as to who should be approached to get grievances redressed. The teacher can make an appeal to the next higher authority, if he/she does not feel satisfied by the decision of the lower officer. Teachers can also approach the government against the decision of the Director of Public Instruction and can also so seek the intervention of court, if not satisfied by the decision of DPI.

In Karnataka and many other states, with the formation of Zila Parishads, the administrative powers have been decentralized at the district level. At the Taluka Level, in Karnataka, there is a Primary School Teacher Association with the concerned Asst Education Officer as its president. Teachers are free to voice their grievances in the

monthly meeting. However, it has not helped in reducing the number of litigations pending in the courts, or with the state Administrative Tribunal.

Teachers not workmen

In a far-reaching judgment in *Miss A. Sundaramba vs Government of Goa*, (1988) case the Supreme court has held, that, school and college teachers are not "workmen" under the Industrial Disputes Act. Hence their dispute cannot be referred to the labour tribunals. In an earlier decision of the Supreme Court, in the Bangalore Water Supply and Sewerage Board Case (1978), it had held that an educational institution is an "industry" under the aforesaid Act, but it had raised the question as to whether teachers in educational institutions could be considered as workmen. The Court dismissing the appeal against judgment of Bombay High Court, observed, imparting education which is the main function of teachers can not be considered as skilled or unskilled manual, supervisory technical or clerical work. Imparting Education is in the nature of a mission or noble vocation. A teacher educates children, moulds their character, builds up their personality and makes them to become responsible citizens. Children grow under the care of teachers. The clerical work, if any, is only incidental to their principal work of teaching.

Source: Ian Brich & Ingo Richter (1990): Comparative School Law, Oxford.

The Andhra Pradesh Education Act 1982, under section 79, states that "No teacher or member of the non-teaching staff employed in any private institution shall be dismissed, removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges". The employee, who is dismissed or removed, can appeal against the order to the competent authority within thirty days of the receipt of order, and if not satisfied by the order of the competent authority, may appeal to the Government within the same stipulated period i.e. within thirty days (Sec 81). The Act, under section 84, recommends that the pay and allowances of any employee in a private institution shall be paid on or before the prescribed day.

In order to protect the interest of teachers and provide better service conditions, all the states have made attractive provisions for teachers' welfare, which have helped in providing job security to teacher and made teaching profession more attractive. These are as follows

- 1 In all the States, the salaries of teachers are generally, at par with other government employees. Teachers of private recognized schools are eligible for same emoluments as their counterparts in government schools.
- 2 There are incentive schemes for teachers in various states for their meritorious services. This includes State awards, and the National award for teachers given by MHRD.
- 3 Teachers are eligible for all those benefits, which are available to other government employees, such as medical aid, reimbursement of medical bills for self and their dependents, leave benefits, LTC facilities etc.
- 4 In all states, the government advances loans to its employees, including teachers, for building/purchasing houses and purchasing vehicles.
- 5 In some states, wards of teachers enjoy freeships, and in others tuition fees paid by them is reimbursed at government rates. In some states, this facility is available up to school level, while in others, tuition fees is reimbursed for all levels of education.
- 6 All the states provide jobs to one of the dependent of deceased or incapacitated employees, including teachers, on compassionate grounds.
- 7 The provision of housing facility, though recommended in some Acts, yet in practice hardly any state has been able to provide to its teachers. However Teachers are entitled for HRA as permissible under state code. Lack of housing facilities to teachers creates inconvenience especially for those serving in remote and rural areas, which at times is the main cause of non-availability of teachers in those areas.
- 8 In all the states, teachers are allowed to improve their educational and professional qualification. Normally, not more than 10 percent teachers in a school are allowed to appear for different academic examinations. Some states have provisions of study leave also. In-service programmes of varying duration are also organized for teachers by the states.

- 9 Teachers enjoy gratuity and pension benefits at par with other government employees in almost all the state
- 10 Some states have 'Teachers Welfare Scheme' of the National Foundation for Teachers which provides aid to needy teachers working in government, private or local body schools. In certain extreme cases the dependent of teachers can also receive aid from this fund
11. The code of conduct and vigilance manuals for disciplinary actions against the employees provide safeguard against any arbitrary disciplinary actions. These manuals provide reasonable opportunities to the employees to defend themselves. Consequently no, major penalty including terminations, dismissal, compulsory retirement or reduction in rank can be inflicted unless the teacher has been given adequate opportunity to defend himself/herself before an impartial and non-controversial inquiry officer. Each case of a major penalty has to be investigated by disciplinary authority, and the report of inquiry officer may be placed to the disciplinary authority before it is sent to the Education Department for approval of the proposed penalty. Even in case of suspension, the teacher has to be paid subsistence allowance at prescribed rates as due and permissible to other government servants. In order that the managing committee of private school may not arbitrarily misuse this power to harass or victimize teachers, in most states suspension requires the prior approval of the Education Department. Hon'ble Supreme Court has upheld the provision relating to approval of Education Department in the Frank Anthony Public School case. These provisions have effectively deterred managing committee from taking unwanted and vindictive action against teachers.

The above mentioned analysis reveals, that, all the states and UTs in the country have ensured security of service to the teachers working in aided schools through Acts, Rules and Regulations. This has made teaching profession more secure than ever before, which is reflected in the increasing number of teachers, and change in their profile over each passing decade since independence. Though, there are still grey areas which need immediate attention, as mere act do not guarantee its proper implementation also, which depends on the will and efficiency of the enforcing

authority. The exploitation of teachers in private schools continues to be a serious concern. Though there is provision of judicial tribunal for grievance redressal but it is yet to be utilized optimally by the teachers due to various completing reasons.

To sum up, the aforementioned supportive measures helped in intensifying the process of achieving the goal of compulsory education. The policies helped to provide a direction to proceed. As an outcome of joint efforts made by announcing various policy initiatives, schemes of incentives, providing adequate financial and manpower support and enacting suitable legislations, the process universalizing free and compulsory education has been significantly accelerated during the post independence period and the Jomtien conference (1993) and Dakar Summit (2000) has reaffirmed the government's commitment towards compulsory education.

✓ The Supreme court in India has been assigned the role of ensuring and enforcing social justice as envisaged in the Preamble, Fundamental Rights, and Directive principles of State Policy, along with the two other branches of the Government-the executive and the legislative. It has played a very important role, ever since independence, to safeguard various constitutional provisions, provided a sense of security to minority groups, and helped improving the status and service conditions of teachers. The decisions of various High courts and the Supreme Court have paved the way for better educational opportunities for children, who are fighting for their survival under the burden of grinding poverty. The judiciary's response to the citizens' right to education has always been very positive. Through a number of significant judgments, the apex court has directed the Government to provide adequate educational facilities, economic support and proper atmosphere to the children belonging to poor socio-economic status. This has helped them to derive the benefits of compulsory education. Through its judgment in *Mohini Jain* (1992), *Unnikrishnan* (1993), and many other similar cases, it has expressed its concern over non fulfillment of the promises made under Article 45 of the constitution and held the opinion that the objectives of social justice cannot be achieved unless free and compulsory education is imparted to all those, who are illiterate.

The Supreme Court has given its interpretation of Article 30 (1), Article 45 and many other Articles of the Constitution related to the education of the child and rights of various minority groups, time and again, in a number of cases. In the early years of independence, the Supreme Court's judgment on *Re Kerala Education Bill 1957*, highlighted the spirit contained in Article 45 of the Constitution. The Court observed, that, it is the sacred duty of the state to provide free and compulsory primary education to the children of the country, and no one should be permitted to obstruct the path of its smooth implementation. The court held, that, the provisions of the constitution were intended to protect all minorities as well as the majority communities. These provisions aim at providing certain cherished rights to minorities relating to their language, culture and religion etc. Announcing its judgment, the hon'ble court observed, that, there was

nothing which could prevent the state from discharging its solemn obligation through government and aided schools, nor, was it required to be discharged at the expense of the minority community

The interpretation of Article 30 (1) of the Constitution was provided in many significant court judgments, from time to time, since independence. For instance in *S Azeez Basha Vs Union of India* (AIR 1968, SC 662) case Chief Justice Wanchoo observed, in Para 19 of the judgment, “Under Article 30 (1) all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. The Article, in our opinion, clearly shows, that, the minority will have the right to administer educational institutions of their choice provided it has established ^{by} them, but not otherwise. The Article cannot be read to mean that even if the educational institution has been established by somebody else, any religious minority would have the right to administer it, because, for some reason or other it might have been administering it before the constitution came into force. The words ‘establish and administer’ in the Article must be read conjunctively, and so read, it gives the right to the minority to administer an educational institution provided it has been established by it.”

The same view was reiterated in the case of *Frank Anthony Public School Employees’ Association Vs Union of India*, reported in AIR 1987, SC 311. The Lordship in this case observed, that, right guaranteed to religious and linguistic minorities under Article 30 is two fold – to establish, and administer educational institutions of their choice. Both the requirements must exist before the institution could claim the right guaranteed to religious and linguistic minorities by Article 30 (1). The Allahabad High Court, in *Badral Hasan Qadiri Vs State of U P and others* (1992) W P No 2940 of 1979 case also, held these two conditions essential in order to avail any privilege under section 16-G (3) of U P Intermediate Act 1921.

The courts have ensured, socio-economic justice to children coming from weaker sections of the society and helped them in deriving the benefits of education. The Andhra Pradesh High Court in *Murali Krishna Public School* case (AIR 1968, A P 204) observed

“Right to education to Dalits is a fundamental right and it is the mandatory duty of the state to provide adequate opportunities to advance educational interest by establishing schools ” This judgment helped in augmenting educational facilities for Dalit children in Andhra Pradesh The State government is now bound to provide educational facilities, economic support, and proper atmosphere to the children belonging to the lower strata of society and the failure on the part of the state government is considered as violative of not only the Article 45, but also Article 21 of the Constitution Various courts have played very protective paternal role in the context of education of the child, and in many cases directed the central government to persuade poor parents, to send their children to nearby school, arrange for their free text books, transport and other facilities etc For instance, in *Ganesh M Jadhav Vs Maharashtra Board of Secondary and Higher Secondary Education, Pune* (W P 1162 of 1992) case, the Bombay High Court directed, the state government and its officers, to make text books available, free of cost, to the students enrolled in standard I-IV in all the schools either under the scheme ‘Book Bank’ as per relevant resolution or otherwise

In another case, *Ram Nath Tiwari and others Vs Committee of Managements, Allahabad Intermediate College, Allahabad* (C M W P 21571, 1992) the Allahabad High Court gave its interpretation of the Article 39 (f) of the Constitution “The state shall in particular direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner ” The court observed, that, a healthy manner for children is best possible in ‘co-education’ The right to education in Article 41 and 45, therefore, must be construed consistently with Article 39 (f) The court held, that, Regulation 8 in Chapter VII of the U P Intermediate Education Regulations was arbitrary and violative of Article 14 of the Constitution, and it is not necessary for the management committee to take prior approval of D I O S for admitting girl students in a boy’s school

5.1 Education as a Fundamental Right

One of the significant contributions, which the judiciary has made, is declaring education as a fundamental right justiciable in a court of law. In its landmark judgment in the *Mohini Jain Vs state of Karnataka* (W P 456 of 1991, decided on 30th July, 1992) the Supreme Court observed that “The directive principles, which are fundamental in

governance of the country, cannot be isolated from the fundamental rights guaranteed under part III. The state is under a Constitutional mandate, to create conditions in which fundamental rights guaranteed to the individuals under part-III could be enjoyed by all. Without making 'right to education' under Article 41 of the Constitution a reality, the fundamental rights under chapter III shall remain beyond the reach of large majority which is illiterate." The "right to education," therefore is concomitant to the fundamental right enshrined under part III of the Constitution. The court strongly observed, that, the state is under a constitutional mandate to provide educational institutions at all levels for the benefit of the citizens. Opportunity to education cannot be confined to the richer sections of the society alone. The state may discharge its obligation through state owned or state recognized educational institutions. The court was of the opinion, that, the goal of social justice cherished under different provisions of our National Charter cannot be achieved unless free and compulsory education is provided to the masses which are illiterate.

✓ Another landmark case, in the context of education as a fundamental right is, that of *Anand Vardhan Chandel Vs. University of Delhi*. The Delhi High Court, while pronouncing its judgment held, that, education is a fundamental Right under the Constitution. The Court observed "The Law is, therefore, now settled that the expression of life and personal liberty in Article 21 of the Constitution includes a variety of rights though they are not enumerated in part III of the Constitution, provided that, they are necessary for the full development of the personality of the individual and can be included in the various aspects of the liberty of the individual. The right to education is, therefore, included in Article 21 of the Constitution."

✓ The most significant case, however, has been the *J P Unnikrishnan Vs State of Andhra Pradesh* (1993). This case raised a basic question for the consideration of the apex court, whether a citizen had a fundamental right to education or not? Whether right to primary education, is fundamental right under Article 21? The Supreme Court, while discharging the case, held the view, that, the right to free and compulsory education under Article 45 was included within the ambit of Article 21. The court analyzed the language used in Article 45 and Article 49 of the Constitution, and suggested that

whereas in Article 49 an 'obligation' was placed upon the state, what was required by Article 45 was 'endeavour' by the state. The court held, that, children of this country have a fundamental right to free education until they complete the age of fourteen year

The court emphasized that the "fundamental purpose of education is to transfigure the human personality into a pattern of perfection through a synthetic process of the development of the body, enrichment of mind, the sublimation of the emotions and the illumination of the spirit. Education is the preparation for a living and for life, here and hereafter." The court further stressed, that, in the context of a democratic form of government, which depends for its substance upon the enlightenment of the populace, education is at once a social and political necessity

This judgment has drawn the attention of the country toward enforcing free and compulsory education in its true spirit by making education a fundamental right of children. The United Front Government included it as one of the priority area in its Common Minimum Programme. Subsequently a Committee comprising education ministers of 13 states and headed by Minister of State for Human Resource Development M R Saikia was constituted to examine and consider the legal, academic, administrative and financial implications of the proposal to amend the Constitution to make free and compulsory education a fundamental right. The committee made following suggestions.

- i The Constitution may be amended to make free and compulsory education a fundamental right
- ii State Governments should levy an educational cess to raise revenues and augment their resources for education and improving facilities in schools
- iii Since education is a state subject, there is no need to enact a Central Legislation making elementary education compulsory. Instead states should either amend their existing legislation, or else, the centre should issue guidelines providing a broad framework for enactment of fresh legislation on compulsory education. The legislation to be enacted by states should provide for "permissive compulsion to enable state governments and local governments to enforce the law selectively in a phased manner."

- iv. While providing enough flexibility to states to formulate their own approach to education keeping in view the local conditions, the report emphasizes on the need to ensure uniformity. Free elementary education may include exemption from tuition fee, provision of free text books for all primary school children and girls upto primary level, and provision of essential stationery to all children in primary classes. It is in this context that 83rd Constitutional Amendment Bill (1997) has been introduced in the Parliament to incorporate education as a fundamental right upto 14 year of age. The 83rd amendment would make free and compulsory education justiciable in the court of law. This would ensure that provision of facilities for elementary education becomes legally binding for the state and parents would have obligation to send their children to school. Education as a fundamental right has been included in the Common Minimum Programme of the Union government and special assistance will be provided to the states for implementing the proposal to make elementary education a fundamental right. The scheme is proposed to be implemented as a part of 'Sarva Shiksha Abhiyan'.

The amendment of the Constitution to provide for compulsory education of children as a fundamental right would demonstrate the necessary political will and administrative resolve of the country to achieve universalisation of elementary education and to eradicate illiteracy.

However, making education as a fundamental right has wider and serious implications for the central and state government on the one hand, and for parents on the other. As indicated earlier, the proposed fundamental right would make it obligatory for the states to provide necessary infrastructure and facilities for elementary education in a given time frame. The states will be required to enact legislation providing for "permissive compulsion" to enable State Governments and local bodies to enforce the law selectively; grounds for exemption from compulsory school attendance, imposition of punishment for faulting parents, and establishment of primary schools within a distance of 1 to 1.5 kilometers, among others. A review of compulsory legislation provided in the preceding section reveals that such legislation already exist

in a number of states and union territories in the country. However, unfortunately many educational administrators are not even aware of such laws. A study conducted by Juneja (1997) prior to the introduction of 83rd Constitutional Bill, indicated, that over 90 percent of the educational administrators were ignorant that their state had a compulsory education law. The existing legislation already have many of the suggestions put forth by the Saikia Committee, such as, conducting regular surveys to identify school age children, notices to parents informing them that a seat has been allotted to their ward, rules for enforcing attendance norms, notices to parents in case of student's absenteeism, and penalty for parents in case of non-compliance. Had these rules, been implemented in their true spirit, schooling facilities and incentives provided to all children, there would have been no need of 83rd Amendment. It is therefore argued, that, the government should try to enforce the existing compulsory education acts in its true spirit and with full sincerity rather than bringing about Constitutional amendment.

A number of issues need attention in the context of education as a fundamental right. These include, an estimation about the number of children to be covered if education is made a fundamental right, number of school buildings and teachers required and the financial requirements thereof.

The first basic issue is counting of the target population of out of school children. There are varying estimates, for instance, the Saikia Committee estimated, that, nearly 6.3 crore of children of the age group 6 to 14 years do not attend school, while, the 1991 census estimated the number of such children to 7.54 crores. In order to bring these children into the folds of compulsory education approximately 1.04 lakh new primary schools, and 2.21 lakh new upper primary schools would be needed. This will require, a large number of teachers, both, at the primary and upper primary level, putting tremendous financial constraints on states to bear.

The financial implications of making education a fundamental right have been discussed in the Majumdar Committee Report (1999), which estimated that an additional amount of Rs. 136, 822 crores (Rs. 1.36 trillion), would be required to

achieve UEE by the year 2007-2008. There may be variation, in the opinion of experts, on the magnitude of financial requirements estimated in the report, however, it is quite obvious that making education as a fundamental right will put enormous financial burden on state exchequer, which, it may find difficult to meet. Assuming a 5% of real growth of GDP per annum between 1996-97 and 2007-2008, on an average, 0.7% of GDP would be additionally required per annum for achieving the target of compulsory education. Such increase has not taken place in recent years and may not be possible in the years to come. This may be overcome to some extent through utilization of cost effective strategies, optimal deployment of existing resources, and mobilization of funds from additional sources. As suggested by Aggarwal (2000) "Planning process, both, at macro and micro level, will also have to undergo significant inter and intra regional imbalances in the quality of access, internal efficiency, and learning outcomes."

Making education a fundamental right has much more serious implications for parents, especially those belonging to low socio-economic status, as it will make parents equal partners with the state in ensuring that all children up to the age of 14 years are attending schools. Critics express fear that it is likely to "land more parents in jail than children in schools." It is argued, that, the resolve has been taken in haste, to gain political mileage than the desire of bringing about social change; and it has not taken into account the problems which are likely to arise. The committee, however, has been conscious about this fact, that, the defaulting parents may be subjected to harassment by bureaucracy. Therefore, it has suggested on the need of fresh legislation to ensure that penalties ought to serve as a deterrent and should be enforced only as a last resort. That too in a "humane and compassionate manner, without losing the sight of the objective of the exercise, i.e. pressurising and persuading recalcitrant parents to send their children to school."

Still, another critique of the report is, that, while advocating the 83rd amendment making education as fundamental right, as well as, fundamental duty of "every citizen who is a parent," it rules out the need for central legislation on compulsory education, which was strongly advocated by the Kothari Commission

(1966) Rather, states have been entrusted with the responsibility to enact legislation on compulsory education. The experience of last five decades, however, reflects that in the absence of any central legislation, it is upto the state to analyse the need for such laws and decide whether it will enforce compulsory act. The practical experience has been, that, this flexibility resulted in nearly half the states and Union Territories not passing any act. And even if the acts were passed, it were not comprehensive enough to encompass the whole state. All the existing compulsory legislation are limited to certain area only. According to existing legislation compulsion can be enforced in a local area through due process of notification only. Therefore, the need of a 'Central Legislation on Education' is strongly felt by some critics. It is also argued that people should be taken into confidence first, before any change in the status-quo, as the experience has shown that "negative incentives" or "coercive strategies" often prove counter productive.

However, in spite of the apprehensions being expressed by various quarters, the 83rd Constitutional amendment is a much-needed step. The advocates of compulsory education feel, that, India is a major exception in regard to enactment and implementation of effective compulsory education laws. Almost every country in the world has such law. 85 percent of the developing countries, including many Asian countries, like, Japan, Korea, Tiwan, and most of the socialist countries have enacted laws making schooling compulsory for an average of about 6-7 years. There is sufficient evidence to suggest that compulsory laws promote high level of enrolment, especially when adequate schooling facilities are available, and net enrolment ratios have moved up towards 90 percent. Simultaneously, measures to reduce cost of school attendance are necessary for children of poor families who are constrained to remain out of school due to inability of their parents to meet the direct or indirect costs of education. Special incentive schemes are required for girls, tribal and scheduled castes who are denied access to education due to social, economic and cultural constraints.

The above mentioned description reflects the significant role which judiciary in India has played in the context of compulsory education. It has rightly

visualized, that, there is a need to use education as a powerful weapon of socio-economic and political change. The decisions of various courts have really paved a glorious path for better education opportunities for the children who are dragging their earthly existence under the grinding poverty. The judiciary in India has always been critical to observe, that, the Directive Principles of State Policy has still remained an unfulfilled goal. It has emphasized that the objective of social justice can not be achieved unless free and compulsory education is provided to all underprivileged children. Through significant judgments like, the Mohini Jain and Unnikrishnan, it has contributed a lot in the direction of making education as a fundamental right of every child. These judicial pronouncements will go a long way in facilitating compulsory education in the country.

CHAPTER-VI

EPILOGUE

Educational Legislation in the country has traversed a very long journey since Charter Act of 1813. There have been some distinct phases in its development, which have been discussed in detail in preceding chapters. To summarise, these phases may be divided as follows:

6.1. Preliminary Phase

This phase in the history of legislation on compulsory education included the sporadic attempts of provinces like Baroda and Travencore etc. to introduce the concept of free and compulsory education for children up to age 10-11 of particular areas, and culminated in the unsuccessful attempt made by Gokhale in 1911 to introduce free and compulsory education in the country.

6.2. Introductory Phase

This phase started with the enactment of Bombay Municipalities (Primary Education) Act 1918, popularly known as the Patel Act, after its mover Sri Vithalbhai Patel. Broadly based on Gokhale's bill, it made significant departures in four aspects which helped in its acceptance by Government: (i) The scope of Patel's Act was restricted to municipal areas only as compared to Gokhale's bill which was criticized for bringing rural areas also under compulsion, (ii) Patel's Act made flexible provision for grant-in-aid by the government leaving it to the discretion of the Government of India as compared to earlier bill which insisted that government should bear two-thirds of the expenditure on compulsory education, (iii) Patel's Act made such provisions which provided opportunity to the government to satisfy itself before giving its sanction, that adequate provision had been made for teachers, building, equipment etc., and (iv) power was reserved to the government to exempt any particular caste or community from the operation of the Act. This phase which continued up to 1921, till education was transferred to Indian control, witnessed very enthusiastic response from various provinces. Subsequently a spate of compulsory laws such as Bengal Act (1919), Bihar and Orissa Act (1919), United Provinces Act (1919), Central Provinces Act (1920),

various provinces. Subsequently a spate of compulsory laws such as Bengal Act (1919), Bihar and Orissa Act (1919), United Provinces Act (1919), Central Provinces Act (1920), Madras Act (1920), and City of Bombay Act (1920) were passed for providing compulsory primary education in areas specified under these acts.

6.3. Expansion Phase

The third phase may be called as expansion phase (1921-1947) which continued till the country got independence in 1947. During this period few new compulsory education acts were enacted in addition to those already in practice such as Bombay Act (1923), the United Provinces (District Boards) Act (1926), Assam Primary Education Act 1926, and Bengal (Rural) Act 1930. The Bengal Act was later on amended in 1932 and extended to girls, The Bombay Act was amended in 1938 and finally replaced by the Bombay Primary Education Act 1947, and the Punjab Act 1919 was replaced by the Punjab Education Act (1940).

This phase is characterized by generating awareness and enthusiasm for implementation of compulsory education Laws in respective areas. A sincere desire to improve various clauses of the existing act has also been reflected through these acts. The U P (District Boards) Act, for instance, removed a lacuna in the existing legislation and provided a legal basis for introduction of compulsory education in the rural areas of the United Provinces for all children in the age group 6-11 years. Similarly a special machinery was created for administration of elementary education in rural areas under the Bengal (Rural) Act. Consequent upon these attempts this period has witnessed rapid expansion of compulsory education in both urban and rural areas of the country.

6.4. Modernisation Phase

This phase started with the adoption of Constitution after attainment of independence. The most significant development during this period has been the modernization of legislation on compulsory education. As sequel to the comparative study of existing compulsory laws in the country by the Ministry of Education, the Delhi Primary Education Act came into force in 1960 as a model act. This resulted in

amendment and modernization of a number of existing compulsory education acts such as the Andhra Pradesh Primary Education Act (1961), Assam Elementary Education Act (1962), Gujarat Compulsory Primary Education Act (1961), Madhya Pradesh Primary Education Act (1961), Mysore Compulsory Primary Education Act (1961), and Punjab Primary Education (1960) etc. These Acts incorporated the provisions of Directive Principles of State Policy enshrined in Article 45 of the Constitution, and therefore, made it the duty of authority administering elementary education to introduce free and compulsory education doing away with the 'permissive' character of earlier Acts. This helped in the fast expansion of compulsory education during the early decades of independence. Since education was a state subject in the Constitution, these laws equipped the state government with greater authority in matters relating to free and compulsory education, which was not seen in Acts passed during pre-independence period where it was left to state's discretion to join hands with local bodies in the course of providing compulsory education. It also augmented the process of achieving universal compulsory education as many states took initiatives to provide schooling facilities to children within walking distance and opened non-formal centers for out of school children.

Further, adopting the spirit of constitutional mandate the provision of free and compulsory education has been applied uniformly to all children of the country-boys and girls, and children belonging to various disadvantaged groups.

Another significant departure in these legislation, from the earlier ones has been its emphasis on educative aspects and on the development of socio-economic measures which would help children to attend schools. The earlier compulsory education act emphasized more on penal provisions and prosecution of defaulting parents for students absenteeism from school. The post independence legislation, focused on educating the public opinion, organizing enrolment drives through active community involvement in the management of schools and luring children to schools through alternative incentive schemes like provisions of school meals, free supply of uniform and text books, and scholarships for poor but meritorious students etc.

Through a number of incentives, and scheme of compulsory education the Constitutional obligations and legislative promises have been tried to be achieved, and

encouraging results have been reported. Enrolment of children at the Primary and Upper Primary levels of education, over five decades of independence, has increased significantly. From merely 19 million in 1950-51, it has increased to about 109 million in 1997-98 at the primary level.

Besides legislation on education a number of Acts enacted for providing legal protection to children in various occupations, also contributed towards children's education as they provided prohibitive measures for children up to the age of 14 years, being employed in hazardous occupation. These include acts, such as, Factories Act 1948; Mines Act 1952; children (Pledging of Labour) Act, 1933, Employment of Children Act 1938, Apprentices Act, 1961, Contract Labour (Regulation and Abolition) Act 1970, and Prevention of Child Marriage Act etc.

The analysis of compulsory educational legislation vis-à-vis development of elementary education reveals that it makes four things mandatory- The government must provide adequate schooling facilities, the parents must send their children to schools, the child must be provided enough time to receive education meaning thereby, abolition of child labour, and the government must ensure that earlier three conditions are fulfilled so as to help the child attend uninterrupted education up to the age of 14 years.

Therefore, enforcing compulsory primary education requires a large scale restructuring of the existing system. From the side of government, it calls for the provision of new infrastructure including opening of new schools, mobilization of resources to meet these tasks, abolition of child labour, provision of incentives and disincentives properly linking them with the safety nets, and enforcing the penal provisions for non-compliance of government directions. The projections made by Majumdar Committee, report discussed in the earlier chapter, make it clear that achieving free and compulsory education is an uphill task requiring huge amount of financial, infrastructural and manpower resources which the country may find difficult to fulfill in near future.

Besides the resource constraints there are several weak links in the Compulsory Education Acts, which call for immediate attention. Some of these are discussed here.

- Majority of states had taken initiative to enact free and compulsory primary education acts mostly prior to 1976 when education was a state subject. With the enactment of 42nd Constitutional Amendment, though education was transferred to the Concurrent List, yet the Central Government has so far maintained that there is no need for a Central Legislation on the subject as it is bound by the provisions of Article 45 of the Constitution. The Saikia committee (1997) also felt that “keeping in view the fact that elementary education remains mainly the responsibility of state it is not strictly necessary to have a Central Legislation. In a diverse federal polity, such as ours, with wide disparities in provision of school education between and within states, it is debatable whether a national legislation on compulsory education would serve much purpose. State Governments being the main providers of elementary education should enact such legislation and be responsible for their proper implementation”(P 13)

However, the lack of any central legislation has led to proliferation of a number of acts throughout the country and often a cause of complexity, ineffectiveness and non-enforceability of laws. It has also affected the uniformity in objectives, structures, purposes and goals etc. Besides in the absence of any central legislation, the states have freedom to perceive the need of bringing out legislation on compulsory education. Consequently, almost half the states and Union Territories of the country are yet to feel the need of bringing out any such legislation. Even in the states where such legislation exists it is hardly applicable to all the areas uniformly and is implemented in restricted area only. Though it is difficult to establish a direct correlation between enactment of compulsory legislation and increase in enrolments of children as availability of schooling facility and socio-economic background of the child has been found to be the major contributing factors, yet, there is sufficient evidence to suggest that compulsory education laws do promote continued high level of enrolment, if sufficient schooling facilities are made available.

- As majority of acts are quite old, the procedure for the enforcement of compulsion described therein was drawn at time when very little practical experience was available. These Acts have remained unchanged in spite of explosion of knowledge in subsequent years, partly, because states lacked the will and resources to seriously enforce compulsion, and partly, because no attempt has been made to study the problem from the point of view of its administrative implications. Consequently there are numerous examples of elaborate procedures in these Acts, which remain unimplemented in its real spirit. For instant, the Bombay Education Act, has the provision of house-to-house census of children liable to compulsory education, and preparation of their list at least three to four months before each session, publication of names of children not attending school, individual notice to parents, report of non-attendance, hearing of applications for exemption, and prosecution of parents who fail either to send their children to schools or to comply with the attendance order. This procedure has been adopted by many other Acts, however in practice, hardly any prosecution of parents has taken place so far, and house-to-house survey of school age children has only recently caught the attention of planners.
- Low socio-economic status of parents has been another major reason for children not attending schools. Poor parents hard pressed with economic depression prefer to avail themselves of the services of their children even at the risk of being fined, and how can one expect these people to send their children to school for a number of years and to bear the expenses of their children. Even if they do not have to pay fees, the price of books and other educational material are beyond their means. Besides in many places children are actively engaged in helping their parents in agricultural activities. The time required for their assistance depends upon the time needed for reaping or sowing of crops. When children go to school, their

parents incur more than financial costs. The time and effort that children might otherwise have devoted to household tasks, production or income generation are also lost. The opportunity costs are often especially high for poor households, which are heavily reliant on child labour. Household demand for child labour has also been considered as greatest barrier to education with children kept away from school by parents needing help at home. The PROBE Survey (1999) has concluded that unless family labour involves rigid work hours that consistently clash with school timings, it is likely to prevent children from attending school with reasonable regularity.

The existing compulsory education acts, however, fail to adopt flexible approach to adjust school term times and holidays according to the local agricultural cycle which may help in reducing the opportunity costs associated with education in such cases. The example of programmes from Egypt and Colombia, which have adjusted school term and day to the seasonal labour patterns of local communities, have shown encouraging results in terms of increase in enrolment and decrease in drop out rate of children, may be experimented in our country also. A strong need is being felt to make provision in education acts where the educational bodies at the district or taluka level are empowered to sanction holidays according to local requirements subject to the maximum numbers of days to be granted each year, should not exceed the days fixed by rules and acts.

- Various Education Acts have the provision of attendance authority to ensure that every child of the relevant age group attends school regularly. The attendance authority has the power to question any guardian for non-compliance with attendance rules, which the guardian is bound to answer or furnish. However in practice this rule by and large remains non-enforceable.
- Likewise the Education Acts also have the provision for inspection and supervision for ensuring the quality of education. Nevertheless in

majority of cases the inspections are carried out as routine affairs and have failed to leave any desirable impact on the quality of education

- Similarly there are many provisions in Education Acts, which prohibit a certain action on the part of school or teachers but are often violated by teachers and schools. For instance a teacher, according to Delhi School Education Act and Rules (Rule 113), cannot undertake private tuition or private employment or otherwise engage himself in any business. Haryana and many other states also have similar rules, nonetheless, private tuitions and coaching are most lucrative business for teachers. The accountability of teachers has been a serious cause of concern, especially when the practice of teacher appraisal in the form of Annual Confidential Report (ACR) has become a routine exercise and absenteeism among teachers is very high. Another noteworthy example is the provision for corporal punishment to students, which has been, and being violated from time to time by the teachers and the principal so much so that the legal intervention had to be sought many times in the past. Taking contingency of corporal punishment to students and its detrimental effect on student the Supreme Court has recently banned its practice in schools. Therefore, even if provisions exist they are not fully utilized.
- All these acts are by and large regulatory or maintenance oriented in character and do not play the development role, thereby, in spite of a large number of Acts in the country since independence on compulsory education, the quality of education remains a cause of concern. These Acts have very comprehensively described the conditions for recognition of schools, the admission eligibility and procedure, grant-in-aid system in school, fee structure, minimum working days, service condition of teachers, their appraisal procedure and grievances redressal etc. However none of the Education Acts has made any reference about the minimum quality of output at the primary level. As a sequel to the recommendations

of NPE (1986) the concept of Minimum Levels of Learning (MLL) was introduced to ensure quality at the primary level, but no Education Act ever tried to include provisions to suggest the step through which MLL may be achieved. Consequently, through these Acts have been able to contribute in the quantitative expansion of education but they have failed to bring qualitative improvement as well.

- As indicated earlier, though these Acts have ensured protection of the rights and interests of different levels of functionaries of the school, they have contributed very little in enforcing the concept of accountability in schools and teachers. Even any attempt to enforce accountability is strongly opposed by teacher organizations, such as, attempt to introduce a Bill on teachers accountability in the Parliament in the recent past had been termed by teacher's organizations as the 'death warrant' for teachers.
- Very few states have undertaken the exercise to review their Education Acts in the light of various recommendations of NPE (1986), and its POA (1992) so as to incorporate new provisions to implement the policy, and thereby to bring overall improvement in the educational system of their state. The Delhi government constituted a committee under the chairmanship of Prof. P. K. Chandra in 1997 to review the Delhi School Education Act and Rule and suggest amendments thereof. The committee suggested many important strategies to bring changes in Delhi Education Act 1973. Such exercises need to be undertaken in other states also. There are several areas, in which a model Act prepared by the Parliament could go a long way. For instance, the 'Kothari Commission (1966), had recommended the need for bringing out a legislation National Common School System, it still needs to be enacted.
- Many unaided private schools are in operation in the country, which are functioning more as education shops meant for minting money. They

exploit parents, students and teachers in various ways through arbitrary increase in fees and low payment of salary to teachers etc. These schools need to be brought under the purview of legislation to ensure improvement in quality of education.

The foregoing analysis reflects on the need of **fresh legislation** on compulsory education incorporating the present needs and realities, along with inbuilt mechanism of its effective enforcement through out the country. The suggestion put forth by the Saikia Committee (1997) on compulsory laws needs to be kept in mind while enacting such legislation. These suggestions are as follows:

- The Committee discussed the issue of 'Permissive Compulsion', which enables state government to notify areas in which the Act can be implemented. Existing state Acts, with the exception of Tamil Nadu, have provisions for gradual expansion of compulsory education laws in a phased manner to areas under the jurisdiction of local authorities. The Committee unanimously supported the provision of permissive compulsion in the new Acts to be enacted by states.
- For states, which have achieved net enrolment ratio of boys and girls above the national average, adoption and implementation of compulsory laws may be made obligatory.
- Ample provision would have to be made for exemptions from compulsory school attendance on reasonable grounds such as non-availability of school within the prescribed distance, serious illness, urgent domestic necessity or reasonable agricultural needs. However exception should not be so liberal as to defeat the very purpose of legislation. The authority for granting such exemption should be vested with Panchayat Raj Institutions and Village Education Committees.
- The involvement of community and provision of attendance authority have shown encouraging result in various states of India during pre independence period and in other countries also. Therefore, the

compulsory laws have to be accompanied by provision for 'school attendance officers' who have authority to visit homes and schools in their jurisdiction to ensure that children are attending schools regularly and do not absent themselves for non-genuine reasons. To make this provision cost effective honorary school attendance officers may be drawn from public life, like retired government officials, former teachers, ex-serviceman, members of PTA, TLC volunteers and members of Panchayat Raj Institutions and VECs

- The fresh legislation should ensure that penalties ought to serve as a deterrent and be enforced only as a last resort, that too in a humane and compassionate manner without losing sight of the objective of the exercise i.e. pressurizing and persuading recalcitrant parents to send their children to school
- Given the apprehensions of State Government with regard to increase in litigation cases subsequent to the enactment of constitutional amendment, the committee proposed the establishment of Nyaya Panchayats for resolving the disputes. These Nyaya Panchayats should be equipped with the powers to impose Penalties on parents, which may in turn be utilized for the development of the local school in accordance with the decisions taken in this regard by local Panchayats and VECs
- The fresh legislation should be comprehensive enough to provide measures for establishment of sufficient schools, provision of teachers, improvement of amenities, raising of resources, internal governance of schools, and role of parent teacher associations etc
- It should be the statutory duty of the State governments to make the provision for a Primary School within 1-1.5 km of rural habitation with a population of 500. In hilly, tribal and inaccessible areas where habitations are scattered and scanty, non formal education and alternative schooling facilities may be provided
- The Committee strongly advocated decentralization of planning and management of elementary education. Consequently, the fresh legislation

should delegate the decision making responsibility to Panchayat Raj Institutions at village and block levels on the basis of micro- planning and school mapping exercises. Decisions regarding provision, location and management of NFE Centers for out of school children should also be delegated to PRIs

- The State legislation should provide for specific duties to be undertaken by Gram Panchyats and VECs under the supervision of PRIs at block and district levels which includes Annual house hold and family surveys for identification of out of school children in the age group of 6-14 years, Maintenance and publication of lists of such children, display of Village School Map in Public Places and in school for sharing information in regard to households, communities and castes with out of school boys and girls, Establishment of school funds through donations and levy of education cess, and Enforcement of school attendance and dealing with defaulting parents through punitive and persuasive measures

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